

United States
Circuit Court of Appeals
For the Ninth Circuit.

MINORU YASUI,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the District of Oregon

FILED

JAN 28 1943

PAUL P. O'BRIEN,
CLERK

No. 10317

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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CHARLES S. BURDELL,

Special Assistant to the Attorney General,
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Portland, Oregon,

For Appellee.

In the District Court of the United States for the
District of Oregon

March Term, 1942

Be It Remembered, That on the 22nd day of
April, 1942, there was duly filed in the District
Court of the United States for the District of Ore-
gon, an Indictment, in words and figures as follows,
to-wit: [1*]

In the District Court of the United States
for the District of Oregon

No. 16056

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MINORU YASUI,

Defendant.

INDICTMENT FOR VIOLATION OF PUBLIC
PROCLAMATION No. 3 OF THE WEST-
ERN DEFENSE COMMAND AND PUBLIC
LAW No. 503, 77th CONGRESS, AP-
PROVED MARCH 21, 1942.

United States of America,
District of Oregon—ss.

The Grand Jurors of the United States of
America, for the District of Oregon, duly im-

* Page numbering appearing at foot of page of original certified
Transcript of Record.

paneled, sworn and charged to inquire within and for said District, upon their oaths and affirmations, do find, charge, allege, and present:

That Minoru Yasui is a person of Japanese ancestry; that he was born at Hood River, Oregon, on the 19th day of October, 1916.

The Grand Jurors aforesaid, upon their oaths aforesaid, do further find and present that the said Minoru Yasui, in the District of Oregon, and within the jurisdiction of this Court, on or about March 28, 1942, did commit an act in an area designated as a military area by a military commander, to-wit: Lieutenant General John L. DeWitt, the Commanding General of the Western Defense Command, the said Commanding General having been duly and properly appointed, designated, and authorized by the Secretary of War of the United States of America to designate and prescribe the said military area pursuant to and under the authority of the Executive Order of our President, commonly referred to as Executive Order 9066; and the said act committed by the said Minoru Yasui in the said military area was deliberately, wilfully and voluntarily contrary to and in violation of a restriction [2] and regulations known as Public Proclamation No. 3 applicable within the aforesaid military area, which said restriction and regulation was duly prescribed, promulgated, and announced by the said Commanding General of the Western Defense Command, the said Commanding General having been

duly appointed, designated, and authorized to prescribe the said restriction and regulation pursuant to and under the authority of the aforesaid Executive Order; and the act which the said Minoru Yasui did commit in violation of the aforesaid restriction and regulation being:

The said Minoru Yasui, on or about March 28, 1942, between the hours of 8 o'clock P.M. and 12 o'clock Midnight, and on March 29, 1942, between the hours of 12 o'clock A.M. and 6 o'clock A.M., that is to say, between the hours of 8 o'clock P.M. of March 28, 1942, and 6 o'clock A.M. of March 29, 1942, was not within his place of residence at Portland, Oregon; and the said act was contrary to the restriction and regulation set out in said Public Proclamation No. 3, which was duly prescribed, promulgated, and announced, as aforesaid, by said Commanding General of the Western Defense Command, as aforesaid, which said restriction and regulation provided that at all times from and after March 27, 1942, all alien Japanese and all persons of Japanese ancestry should and must, between the hours of 8 o'clock P.M. and 6 o'clock A.M., be within their respective places of residence;

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further find and present to the Court that the said Minoru Yasui knew that he was a person of Japanese ancestry, and knew of or should have known of, and understood or should have understood, the restriction and regulation, which pro-

vided that all persons of Japanese ancestry should and must be within their respective places of residence between 8 o'clock P.M. and 6 o'clock A.M., knew of or should have known of the date the said restriction and regulation became effective, and knew or should have known the said restriction and regulation was applicable to him, and, further knew or should have known the said re- [3] striction and regulation was prescribed and promulgated by said military commander, to-wit: the Commanding General of the Western Defense Command; and, further, the said Minoru Yasui knew or should have known that his act, as aforesaid, was in violation of and contrary to the meaning and intent of the said restriction and regulation.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further find and present that the said Minoru Yasui, in committing the above described act, did not act or purport to act pursuant to or within any exception authorized or made to the aforesaid restriction and regulation;

Wherefore, the Grand Jurors aforesaid, upon their oaths aforesaid, do present to the Court that the aforesaid Minoru Yasui, at the time and place, and in the manner and form aforesaid, committed an act contrary to the peace and dignity of the United States and contrary to the welfare, safety, and security of the United States, and contrary to the form of the statute of the United States in such case made and provided.

Dated at Portland, Oregon, this 22nd day of April, 1942.

A True Bill.

ARNOLD S. ROTHWELL,
Foreman, United States
Grand Jury

CARL C. DONAUGH
United States Attorney

[Endorsed]: A True Bill. Arnold S. Rothwell, Foreman. Filed in open Court April 22, 1942. G. H. Marsh, Clerk. [4]

And Afterwards, to wit, on the 4th day of May, 1942, there was duly Filed in said Court, a Stipulation to amend indictment, in words and figures as follows, to wit: [5]

[Title of District Court and Cause.]

STIPULATION

This Matter coming on to be heard on the demurrer of the defendant to the indictment herein, the defendant being present in person and represented by his counsel, Earl Bernard, the United States being represented by Carl C. Donaugh, United States Attorney for the District of Oregon, and Tom C. Clark, Special Assistant to the Attorney General, the Court of its own motion having

noted on Page 2 of the indictment, in Line 11, an apparent defect or imperfection in the matter of form only, in the use of the word "May" in designating the time of the offense and in the use of the word "or" in designating the time of the offense, which defects are plainly imperfections in matter of form only, for the reason that the charging portion of the indictment, on Page 1 thereof, Line 21, plainly and sufficiently designates the date of the alleged offense,

Now Therefore, the parties hereto, being desirous of having further proceedings based on the indictment herein, without more formal proceedings to clarify the apparent defect or imperfection in said indictment in the matter of form only, do hereby stipulate as follows:

The defendant, Minoru Yasui, stipulates and agrees that a reading of the indictment herein completely informs him of all the necessary elements of the charge against him, including the time and place of the alleged offense; that other averments of the indictment make plain to the defendant that the discrepancy hereinabove referred [6] to is a mere defect or imperfection in matter of form only and that he has in no way been prejudiced thereby;

It Is Further Stipulated and Agreed by the defendant and his counsel that in all future proceedings in this criminal action the indictment, by agreement, shall read, on Line 11, Page 2 thereof, as follows: "hours of 8 o'clock P.M. and 12 o'clock midnight, and on March 29, 1942."

Done in open court this 4th day of May, 1942.

MINORU YASUI

Defendant

E. F. BERNARD

Attorney for Defendant

CARL C. DONAUGH

United States Attorney for
the District of Oregon

Approved:

JAMES ALGER FEE

District Judge

[Endorsed]: Filed May 4, 1942. [7]

And afterwards, to wit, on Monday, the 4th day of May, 1942, the same being the 55th Judicial day of the Regular March, 1942, Term of said Court; present the Honorable James Alger Fee, United States District Judge, presiding, the following proceedings were had in said cause, to wit: [8]

[Title of Cause.]

May 4, 1942

ORDER TO AMEND INDICTMENT

Public Proclamation No. 3, Western Defense Command, Approved March 21, 1942.

Now at this day comes the plaintiff by Mr. Carl C. Donaugh, United States Attorney, Mr. Thomas C. Clark, Mr. Charles S. Burdell and Mr. Wallace

Howland, Special Assistants to the Attorney General of the United States; and the defendant in his own proper person and by Mr. Earl F. Bernard, of counsel. Whereupon the said defendant is duly arraigned upon the indictment herein, and waives reading of the same, and files herein a demurrer to the said indictment; and counsel for plaintiff and counsel for defendant in open court stipulate and agree that the indictment herein may be amended by substituting the word "and" for the word "or" and the word "March" for the word "May", at the end of line 11 on page 2 of the said indictment herein; and

It Is Ordered that the said indictment may be corrected in accordance with the said stipulation.

Whereupon the said defendant, in open court, withdraws his demurrer to the indictment herein and for plea to the said indictment now says that he is not guilty as charged therein. [9]

And Afterwards, to wit, on Friday, the 12th day of June, 1942, the same being the 88th Judicial day of the Regular March, 1942, Term of said Court; present the Honorable James Alger Fee, United States District Judge, presiding, the following proceedings were had in said cause, to wit: [10]

June 12, 1942

WAIVER OF TRIAL BY JURY AND
TRIAL BY COURT

Indictment:

Public Proclamation Issued by Western Defense
Command

Now at this day comes the plaintiff by Mr. Carl C. Donagh, United States Attorney, Mr. J. Mason Dillard, Assistant United States Attorney, and Mr. Charles S. Burdell, Special Assistant to the Attorney General of the United States, and the defendant, above named, in his own proper person and by Mr. Earl F. Bernard, of counsel. Whereupon said defendant, in open court in person and by his counsel, waives a jury trial in this cause and consents that this cause may be tried by the Court without the intervention of a jury.

Thereupon appear: Gus J. Solomon, B. A. Green, Will Roberts, Randall B. Kester, Omar C. Spencer, Manley B. Strayer, R. R. Morris, Jack McLaughlin and Alfred A. Hampson, attorneys heretofore appointed by the Court as attorneys amicus curiae, and thereupon this cause comes on to be tried by the Court without the intervention of a jury. Thereafter, the Court having heard the evidence adduced, at the close of all of the testimony the said defendant moves the Court for a mandatory verdict of not guilty in this cause. Whereupon this cause is continued for argument until Thursday, June 18, 1942. [11]

And Afterwards, to wit, on Monday, the 16th day of November, 1942, the same being the 13th Judicial day of the Regular November, 1942, Term of said Court; present the Honorable James Alger Fee, United States District Judge, presiding, the following proceedings were had in said cause, to wit: [12]

[Title of District Court and Cause.]

ORDER OVERRULING MOTION FOR DIRECTED VERDICT AND VERDICT

This Cause having come on for hearing this 16th day of November, 1942, and the defendant, Minoru Yasui, being present in court in person with his attorney, John Collier, and the United States being represented by Carl C. Donaugh, United States Attorney for the District of Oregon, J. Mason Dillard, Assistant United States Attorney for the District of Oregon, and Charles S. Burdell, Special Assistant to the Attorney General, It Is Hereby Ordered, Adjudged, and Decreed: That the Motion for Directed Verdict heretofore made on behalf of the said defendant is overruled; It Is Further Ordered that the said defendant be remanded to the custody of the United States Marshal pending further proceedings.

Dated at Portland, Oregon, this 16th day of November, 1942.

JAMES ALGER FEE

Judge

[Endorsed]: Filed November 16, 1942. [13]

And Afterwards, to wit, on the 16th day of November, 1942, there was duly Filed in said Court, and entered upon the record, a Finding by the Court, in words and figures as follows, to wit: [14]

In the District Court of the United States
For the District of Oregon

No. C-16056

UNITED STATES OF AMERICA,
Plaintiff,
vs.

MINORU YASUI,
Defendant.

FINDING

This cause by stipulation of the parties having come on for trial by the Court without the intervention of a jury and the Court having heard the evidence adduced, the arguments of counsel, and now being fully advised,

Finds the defendant, Minoru Yasui, guilty as charged in the indictment herein.

November 16, 1942.

JAMES ALGER FEE,
Judge

[Endorsed]: Filed November 16, 1942. [15]

And Afterwards, to wit, on the 17th day of November, 1942, there was duly Filed in said Court, an Opinion, in words and figures as follows, to wit: [16]

[Title of District Court and Cause.]

OPINION

November 16, 1942

James Alger Fee, District Judge:

On December 7, 1941, the armed forces of the Emperor of Japan attacked the bases of the United States in the Islands of the Pacific Ocean without warning and without declaration of war. Congress, on December 8, 1941, by joint resolution, declared a state of war to be existing between the Imperial Government of Japan and the Government and people of the United States.¹

Thereafter, on December 11, 1941, the states of Oregon, Washington, Idaho, Nevada, Utah and Arizona and the Territory of Alaska were designated a theatre of military operations as the Western Defense Command by order of the Secretary of War.

Before the outbreak of hostilities, in August, 1941, Congress had amended a statute² passed in

(1) Public Law 328, 77th Congress, United States Code Cong. Service, No. 9 (1941), p. 843.

1918 designedly to protect "war material" in time of war by placing under protection by punitive provisions "national-defense material", "National-defense premises" and "national-defense utilities", which are therein broadly defined.³

Thereafter, the President of the United States, by Executive Order Number 9066, after reciting that "the successful prosecution of the war requires every possible protection against espionage and against sabotage to national-defense material, national-defense premises, and national-defense utilities as defined" by this statute, authorized and directed the [17] Secretary of War and military commanders designated by him to prescribe military areas in such locations and of such boundaries as might be desired, from which all persons might be excluded and subject to whatever restrictions might be imposed upon the right of persons to enter, remain in or leave, such areas. Lieutenant General John L. DeWitt was designated by the Secretary of War to exercise the authority granted by the Executive Order for the Western Defense Command.

Thereafter, claiming to act pursuant to the

(2) Act of April 20, 1918, 40 Stat. 533, 50 USCA, 101-103.

(3) 50 USCA 104, Act of August 21, 1941, 55 Stat. 655. A previous amendment was Act November 30, 1940, 54 Stat. 1220.

Executive Order and the authority vested in him by the Secretary of War, General DeWitt, by Public Proclamation No. 1, on March 2, 1942, declared certain portions of the Western Defense Command, because of its liability to attack or to attempted invasion and because it was subject to espionage and acts of sabotage, a military area "requiring the adoption of military measures necessary to establish safeguards against such enemy operations."

Certain areas were thereby designated as "Military Areas" and "Military Zones." It was thereby announced that "such persons or classes of persons as the situation may require" would, by subsequent proclamation, be excluded from certain of these areas, and further declared that with regard to other of said areas "certain persons or classes of persons" would be permitted to enter or remain therein under certain regulations and restrictions to be subsequently prescribed. Further "Military Areas" and "Military Zones" are designated by the Proclamation No. 2, of March 16, 1942.

Public Act 503, passed by Congress and approved by the President March 21, 1942, made it a criminal act for any person "to enter, remain in, leave or commit any act in any Military Area or Military Zone established pursuant to the Executive Order of the President by any military commander designated by the Secretary of War", contrary to the restrictions applicable to any such area if such person knew of the existence, application, and extent, of the restriction.

On March 24, 1942, Public Proclamation No. 3 was issued by General DeWitt, reciting "as a matter of military necessity the establishment of certain regulations pertaining to all enemy aliens and all persons of Japanese ancestry within said Military Areas and Zones * * *". This regulation established a curfew law for such enemy aliens and such persons of Japanese ancestry within certain of the zones above indicated. [18]

Minoru Yasui, the defendant, is the son of an alien Japanese father and mother. He was indicted April 22, 1942, on the ground that he had violated the curfew provisions of this proclamation. He pleaded "Not Guilty", waived a jury and was tried by the court. The evidence showed that Yasui was born at Hood River, Oregon, on October 19, 1916. On March 28, 1942, at 11:20 P.M., Yasui walked into the police station in Portland, Oregon, within one of the designated areas. He admits this fact and that he knew it was a violation of the regulation. His contention was and is, however, that he could not be convicted therefor because he was a citizen of the United States and that the regulation is, as to him, unconstitutional and void.

It is necessary for the United States in a criminal case, not only to establish the material facts beyond a reasonable doubt, but also to establish that there was an applicable legal basis for the prosecution. This court, established under the Constitution of the United States, must determine jurisdiction at the threshold by pointing to an adequate

and valid law, making punishable the acts done by defendant.

Although in the ultimate there is but one question which the court is called upon to decide and that is the guilt or innocence of Yasui, which can be determined by a single unsupported pronouncement of judgment, the argument herein has taken a wide range and such claims have been made that even at the risk of having the utterances called dicta, as is the current fashion regarding those in the *Milligan*⁴ case, the court should reveal the foundation of the findings. Grave danger exists that otherwise the findings might be used as a basis for unwarrantable action in other times.

The fact that the problem of the Japanese citizen and alien, resident in the states bordering the Pacific, has been solved by the army officers in charge, aided by the acquiescence of the vast majority of the American citizens of that race, does not relieve the court from the responsibility of determining the case as here presented.

The American officer does not desire to found a military dictatorship but to protect his country from the perils of war. Both by training and choice he is first a citizen and second a soldier. Normally, therefore he is [19] an adherent even in times of stress to the Constitution and a representative form of government. General DeWitt is an able and resourceful officer. It is certain he has no inclination, even though faced with a serious

(4) *Ex Parte Milligan*, 71 U.S. 2.

situation, to violate the fundamental law of the country.

As a premise, then, the existence of a war in which victory is a vital necessity to assure survival of the freedom of the individual guaranteed by the Federal Constitution, must be predicated. The conditions and necessities of preparation for modern war had previously been recognized by this court.⁵ The areas and zones outlined in the proclamations became a theatre of operations, subjected in localities to attack and all threatened during this period with a full scale invasion. The danger at the time this prosecution was instituted was imminent and immediate. The difficulty of controlling members of an alien race, many of whom, although citizens,

(5) "In this present period, the wars undeclared under the law of nations, the disregard of international convention, the hostile concentrations cloaked by manifestos of pacific intention, the elimination of time and distance as ponderable factors, the lightning strokes of modern arms are actualities over which the words 'at peace' cannot be permitted to tyrannize in making judgments." *Stone vs. Oscar Christensen*, 36 F. Supp. 739 (D. C. Oregon) (Fee), December 23, 1940. It was there held before declaration of war that the draft act of 1940 was constitutional in order to provide for the national defense.

Ex Parte Owens, unreported, (D. C. Oregon) (McColloch), here it was held that one under eighteen years of age who had enlisted in the National Guard of the State of Oregon without parents' consent could be inducted and compelled to serve after the mobilization in federal service. Affirmed on a different point, *Owens vs. Huntling*, 115 F. (2d), 160.

were disloyal with opportunities of sabotage and espionage, with invasion imminent, presented a problem requiring for solution ability and devotion of the highest order.

It must be remembered, however, when dealing with the claims made by writers who are not charged with the responsibility of maintaining the structure of the fundamental law and the guarantees of the liberty of the individual, that the perils which now encompass the nation, however imminent and immediate, are not more dreadful than those which surrounded the people who fought the Revolution and at whose demand shortly thereafter, the ten amendments containing the very guarantees now in issue were written into the Federal Constitution;⁶ nor those perils which threatened the country in the [20] War of 1812, when its soil was in the hands of the invader and the Capitol itself was violated; nor those perils which engulfed the belligerents in the war between the States, when each was faced with disaffection and disloyalty in the territory in its control. Yet each maintained the liberty of the individual.

In *Ex Parte Milligan*, *supra*, a citizen of the United States who had been tried, convicted and sentenced to death by military commission for con-

(6) "The first ten amendments were drafted by men who had just been through a war. The Third and Fifth Amendments expressly apply in war." Chafee, *Free Speech in the United States* (1941) 30.

spiracy and subversive measures against the federal government, applied for habeas corpus. He had at all times been a resident of the local state of Indiana, which was not at the time under occupation by any hostile troops, although it had been previously invaded and was then threatened with invasion.

When this case came before the Supreme Court of the United States, the whole field of the interrelation of the civil and military power was covered in the arguments of able counsel. The court in the opinion of necessity considered thoroughly and intentionally the foundation of military power over civilians. It was necessary there, as here, to determine whether a citizen, who is not a soldier, a prisoner of war, nor a spy in a loyal state not presently invaded, is subject to military jurisdiction, or whether as a non-belligerent he must be tried by civil courts solely for offenses designated by Congress. The direct question in this case was not there involved, because trial by a military commission is not here attempted. But the opinion in all its phases is binding upon this court. It cannot be disregarded. The expressions cannot be brushed aside as dicta, except by a process of wishful rationalization.

The rationale of both the main and concurring opinion is that the civil power in this country is supreme. Neither directly nor indirectly can the military power become dominant. The Constitution, laws and treaties of the United States control.

Nor is the situation changed by the incidence of war. This doctrine has been re-affirmed many times by the Supreme Court of the United States,⁷ citing the Milligan case. [21]

But it is urged without making a distinction between power based upon military necessity and power based upon Congressional action that in time of war the constitutional guarantees must be re-interpreted. If this be a plea for the exercise of arbitrary power, it is not conceived that it has the support of the military authorities, and, certainly, has not the support of the decided cases. The argument proceeds upon the basis that the disposition of the Supreme Court now is to overlook the constitutional limitations when confronted with an emergency.

(7) *Sterling vs. Constantin*, 287 U.S. 378; *Home Building & Loan Association vs. Blaisdell*, 290 U.S. 398, 426.

“We must therefore first inquire whether any of the acts charges is an offense against the law of war cognizable before a military tribunal, and if so whether the Constitution prohibits the trial. We may assume that there are acts regarded in other countries, or by some writers on international law, as offenses against the law of war which would not be triable by military tribunal here, either because they are not recognized by our courts as violations of the law of war or because they are of that class of offenses constitutionally triable only by a jury. It was upon such grounds that the Court denied the right to proceed by military tribunal in *Ex parte Milligan*, *supra*.”

Ex parte Quirin, Supreme Court of the United States, October 29, 1942, p. 9.

It is true that the modern tendency is to refuse to draw tight the circle of inviolability about rights of property⁸ under the due process clause and to change the emphasis in relations of labor and capital.⁹ But there is no indication either in peace or war of a disposition to wear away the fundamental guarantees of liberty of the individual. Indeed, the emphasis, if not for extension, by construction at least has been strongly upon increasing vigilance in regard thereto.¹⁰ Here no mere property rights are involved, but the right of personal freedom of action.

The court speaks distinctly in the *Milligan* case regarding the re-interpretation of the guarantees because of the perils of war.

“It is claimed that martial law covers with its broad mantle the proceedings of this military commission. The proposition is this: that in time of war the commander of an armed force (if in his opinion the exigencies of the

(8) *United States vs. Carolene Prodcets Co.*, 304 U.S. 144; *Home Building & Loan Association vs. Blaisdell*, *supra*, 448; *Block vs. Hirsh*, 256 U.S. 135, 145; *Hamilton vs. Kentucky Distilleries Co.* 251 U.S. 146, 156-7.

(9) *Lauf vs. E. G. Shinner & Co.*, 303 U.S. 323, 325; *National Labor Relations Board vs. Pacific Greyhound Lines, Inc.* 303 U.S. 272; *New Negro Alliance vs. Sanitary Grocery Co.*, 303 U.S. 552.

(10) *Johnson vs. Zerbst*, 304 U.S. 458; *Hague vs. Committee for Industrial Organization*, 307 U.S. 496; *Thornhill vs. Alabama*, 310 U.S. 88.

country demand it, and of which he is to judge), has the power, within the lines of his military district, to suspend all civil rights and their remedies, and subject citizens as well as soldiers to the rule of his will; and in the exercise of his lawful authority cannot be restrained, except by his superior officer or the President of the United States." [22]

"If this position is sound to the extent claimed, then when war exists, foreign or domestic, and the country is subdivided into military departments for mere convenience, the commander of one of them can, if he chooses, within his limits, on the plea of necessity, with the approval of the Executive, substitute military force for and to the exclusion of the laws, and punish all persons, as he thinks right and proper, without fixed or certain rules."

"The statement of this proposition shows its importance; for, if true, republican government is a failure, and there is an end of liberty regulated by law. Martial law, established on such a basis, destroys every guarantee of the Constitution, and effectually renders the 'military independent of and superior to the civil power'—the attempt to do which by the King of Great Britain was deemed by our fathers such an offense, that they assigned it to the world as one of the causes which impelled them to declare their independence. Civil liberty and this kind of martial law cannot endure to-

gether; the antagonism is irreconcilable; and, in the conflict, one or the other must perish."

The question now before this court is whether a military commander has the right to legislate and pass statutes defining crimes which will be enforced by the civil courts. A power to so legislate validly and to execute such laws makes the possessor thereof supreme. The Constitution vests the legislative power in Congress. It is axiomatic that so long as no form of military jurisdiction is in force over the particular locality or person, the civil law will prevail.

The classical definitions of various situations where ordinary civil law does not apply is given in the concurring opinion in *Ex parte Milligan*, as follows:

"There are under the Constitution three kinds of military jurisdiction; one to be exercised both in peace and war; another to be exercised in time of foreign war without the boundaries of the United States, or in time of rebellion and civil war within states or districts occupied by rebels treated as belligerents; and a third to be exercised in time of invasion or insurrection within the limits of the United States, or during rebellion within the limits of states maintaining adhesion to the National Government, when the public danger requires its exercise. The first of those may be called jurisdiction under Military Law, and is found in acts of Congress prescribing rules and ar-

ticles of war, or otherwise providing for the government of the national forces; the second may be distinguished as Military Government, superseding, as far as may be deemed expedient, the local law, and exercised by the military commander under the direction of the President, with the express or implied sanction of Congress; while the third may be denominated Martial Law Proper, and is called into action by Congress, or temporarily, when the action of Congress cannot be invited, and in the case of justifying or excusing peril, by the President, in times of insurrection or invasion, or of civil or foreign war, within districts or localities where ordinary law no longer adequately secures public safety and private rights." [23]

This is not a case here prosecuted under "military law" as above defined. Yasui holds a commission voluntarily accepted as a Second Lieutenant in the Officers Reserve Corps. By this voluntary surrender of his civilian status under certain circumstances Congress could have made him amenable to military law. But if so, he would have been tried by court martial, under an Act of Congress establishing the "Articles of War".¹¹ An appeal to a civil court erected under the Constitution would

(11) 41 Stat. 804.

be improper.¹² Under the Articles of War, the right of the superior officer to legislate or establish rules and regulations for those under his command is clear. Violations of such orders are made punishable. While it is true this court has held that a civilian can be required to give military service involuntarily, at the call of his country and while upon induction into the service he becomes subject to military law, until inducted, the civilian does not owe obedience to army orders or proclamations.

Trial by military commission of spies, prisoners of war and civilians attached to the military forces is another exception to the rule that military law does not apply to civilians. In certain instances in case of spies it is recognized as applicable to civilians under the Articles of War.¹³ Precedents, furthermore, exist in our history for the trial of spies by military commission whether discovered in a

(12) *Smith vs. Shaw*, 12 Johnson 257; *In re Kemp*, 16 Wisconsin, 359; *Ex parte Goldstein*, (D.C.) 268 F. 431; *United States vs. McIntyre*, 9 Cir. 4 F. (2d), 823; See in *re Egan*, 5 Blatch. 319, 8 Fed. Case No. 4303. *Ex parte Henderson*, 11 Fed. Case No. 6349.

(13) The Articles of War seem to give specific legislative authority for trial by "Military Commission" under the situation. See Article 82, 41 Stat. 804, 10 USCA, Sec. 1554. *United States ex rel Wesels vs. McDonald*, 265 F. 754, app. dism. 256 U.S. 705. But see *Op. Atty. Gen.* 356 and see *Arnand vs. United States*, 26 Ct. Cl. 370.

military area or not.¹⁴ These explain the recent action of the Supreme Court of the United States in refusing habeas corpus to persons tried by military commission who had landed surreptitiously on the shores of this country and who were afterward captured in the interior.¹⁵ The fact that those who had some claim to American citizenship were [24] included in the number furnishes no precedent here. An American citizen in service of the enemy who comes through the lines of battle to land here is subject to the laws of war.¹⁶ It is to be noted that citizens residing in this country alleged to have

(14) The most notable was the case of Major Andre, the English confederate of General Arnold in the Revolution, whose sentence to death by military commission was approved by Washington and executed. See Argument of B. F. Butler, in the Milligan case, *supra*, 99-101, where this and other matters are cited. The broader implications contended for seem to have been there repudiated.

(15) *Ex parte Quirin*, *supra*.

(16) The doctrines of *Ex parte Milligan* are not repudiated by the *Quirin* decision. The *Milligan* case gives color to the doctrine that a "prisoner of war" can be tried in loyal territory in time of war by military commission; Page 131.

"We say 'enemy's country' because, under the recognized rules governing the conduct of a war between two nations, Cuba, being a part of Spain, was enemy's country, and all persons, whatever their nationality, who resided there were, pending such war, to be deemed enemies of the United States and of all its people." *Juragua Iron Company, Ltd. vs. United States*, 212 U.S. 297, 305-6.

assisted such persons were not tried by military commission but were indicted for treason.¹⁷

Another exception to ordinary civil rule prevails in war. The military to meet the emergency of the times, where the peril is too great to permit certain persons to go at large, are at times forced by the public danger to seize persons, citizens and alien alike, and to hold them and even to transport them long distances. History shows that in such instances the power of the courts has been defied.¹⁸ The rule of force alone is then applied. In the event that habeas corpus is sought, the question of whether this remedy is apposite must be judged under the Constitution and the civil law. If the person has been seized for an indictable offense and the usual processes have been followed, he can be held. It is only when the exercise of the writ has been illegally suspended in a given area or the courts have been closed that the military can postpone the application of the fundamental doctrines, unless the particular case fall within the exceptions.

Nor is this a situation where a "military government" could be erected. Oregon is not conquered territory nor hostile country. It is an area, the inhabitants of which are intensely loyal to the United States. In few portions of the country is the population as co-operative in the war effort. [25]

(17) The indictment and trial of alleged confederates have been reported in the press.

(18) See *Ex parte Merryman*, 17 Fed. Cas. 144 No. 9487 (C.C.Md).

The application of military government in the states of this country has never been made except after the war between the states, when the area of the southern states was treated as territory conquered from a belligerent, and military governments were set up therein.¹⁹ The history of this experiment suggests that it be not repeated.²⁰

The present case does not then arise under "military law", nor can it be justified by doctrines relating to trial of military personnel by court martial, nor to trial of spies by military authority. The instant case relates to the power of the military

(19) Birkhimer, *Military Government and Martial Law*, (2d Ed.), Chapter XXIII.

(20) President Wilson, in the dark days of another war, when the peril of sabotage and espionage was as great, and the number of citizens of divided loyalty at least as great, expressed strong opposition to the enactment of a statute which would have divided this country into military districts subject to regulations adopted by appropriate military commanders. He wrote to Senator Overman, as follows:

" * * * I am heartily obliged to you for consulting me about the Court-Martial Bill, as perhaps I may call it for short. I am wholly and unalterably opposed to such legislation * * * . I think it is not only unconstitutional, but that in character it would put us nearly upon the level of the very people we are fighting * * * . It would be altogether inconsistent with the spirit and practice of America * * * , I think it is unnecessary and uncalled for. * * * " 8 Baker, *Woodrow Wilson, Life & Letters*, 100; *Chafee Free Speech in the United States*, supra, 38, Note 18.

commander to issue regulations binding indiscriminately upon citizens and alien, reserve officer, spy and civilian. Such power only is tolerated in the first instance if a state of "martial law" has been proclaimed by the proper authority and in the ultimate only if the facts prove the existence of the military necessity therefor.

"But when the military commander controls the persons or property of citizens who are beyond the sphere of his actual operations in the field, when he makes laws to govern their conduct, he becomes a legislator. Those laws may be made actually operative; obedience to them may be enforced by military power; their purpose and effect may be solely to support or recruit his armies, or to weaken the power of the enemy with whom he is contending. But he is a legislator still; and whether his edicts are clothed in the form of proclamations, or of military order, by whatever names they may be called, they are laws. If he have the legislative power conferred on him by the people, it is well. If not, he usurps it. * * * He is not the military commander of the citizens of the United States, but of its soldiers." [26]

"The military power over citizens and their property is a power to act, not a power to prescribe rules for future action. It springs from present pressing emergencies, and is limited by them. It cannot assume the functions of the statesman or legislator, and make provisions

for future or distant arrangements by which persons and property may be made subservient to military uses. It is the physical power of an army in the field, and may control whatever is so near as to be actually reached by that force in order to remove obstructions to its exercise.”²¹

A military commander under the Constitution is given no power of legislation. It follows, therefore, in this case, that the regulations issued by his sole authority, even though it be established that the territory on the Pacific Coast of the United States has been invaded and is in imminent danger of invasion, confer upon the military commander no power to regulate the life and conduct of the ordinary citizen,²² nor make that a crime which was not made a crime by any act of Congress. The Congress of the United States is in session and consists of the elective representatives of the people. To this body, therefore, alone is committed its ordinary power of passing laws which govern the conduct of citizens, even in time of war.

(21) Davis “Executive Power” (October 1862), quoted in Birkhimer’s *Military Government and Martial Law*, (2d Ed.), Section 368.

(22) “ * * * the Court concluded that Milligan, not being a part of or associated with the armed forces of the enemy, was a non-belligerent, not subject to the law of war save as—in circumstances found not there to be present and not involved here—martial law might be constitutionally established.” *Ex parte Quirin*, *supra*, 21.

It is true that martial law, when instituted, is complete and represents the arbitrary will of the commander,²³ controlled only by consideration of strategy, tactics and policy and subject only to the orders of the President. Under martial law the commander can seize men and hold them in confinement without trial. He can try them before a military commission for a violation of the laws of war or his own regulations. Finally, he can [27] legislate and bind citizens and others by rules established by him and governing their conduct in the future.²⁴

Whether declared by the President or by Congress or by the military commander or existing on

(23) See arguments in the Milligan case. It is true as heretofore pointed out, the exercise of will is restrained in the American officer by a sense of ultimate civil responsibility. See Birkhimer, *Military Government and Martial Law*, (2d Ed.), Chapter XIX, which contains an exposition of this attitude. Public opinion in the governed territory is perhaps a restraining force in certain fields, but is not presently a factor here.

(24) Under the Organic Act of Hawaii, the Governor, on December 7, 1941, turned the control over to the military the courts closed to re-open under military direction for certain purposes only and the territory is now completely governed by the military. The necessity there is apparent, but the consequences support the statements above.

Proclamation of defense period, Joseph B. Poindexter, Governor, December 7, 1941.

Proclamation of martial lay, Joseph B. Poindexter, Governor, December 7, 1941, Honolulu Star-Bulletin, Dec. 8, 1941.

Proclamation of acceptance of military rule, Lieu-

account of conditions, the only basis for martial law is military necessity.²⁵

tenant General Short, December 7, 1941, Honolulu Star-Bulletin, Dec. 8, 1941.

General Orders No. 4, December 7, 1941, Honolulu Star-Bulletin, Dec. 9, 1941.

General Orders No. 29, December 16, 1941, Honolulu Star-Bulletin, Dec. 19, 1941.

General Orders No. 57, January 27, 1942, Honolulu Star-Bulletin, Jan. 30, 1942.

(25) Letter President Lincoln to Secretary Chase, September 2, 1863:

“Knowing your great anxiety that the Emancipation Proclamation shall now be applied to certain parts of Virginia and Louisiana which were exempted from it last January, I state briefly what appear to me to be difficulties in the way of such a step. The original proclamation has no constitutional or legal justification except as a military measure. The exemptions were made because the military necessity did not apply to the exempted localities. Nor does that necessity apply to them now any more than it did then. If I take the step, must I not do so without the argument of military necessity, and so without any argument except the one that I think the measure politically expedient and morally right? Would I thus not give up all footing upon Constitution or law? Would I not thus be in the boundless field of absolutism? Could this pass unnoticed or unresisted? Could it fail to be perceived that without any further stretch I might do the same in Delaware, Maryland, Kentucky, Missouri, and Tennessee, and even change any law in any state? Would not many of our own friends shrink away appalled? Would it not lose us the elections, and with them the very cause we seek to advance?”

There is a pernicious doctrine known as "partial martial law", which was developed by an ambitious governor as a method of dictating regulations to the people of a state uncontrolled by the Constitution or laws thereof.²⁶ It constituted an expression of his arbitrary will. The long history within recent years of the use of arbitrary power in the guise of martial [28] law by the executives of the states, sometimes upon the flimsiest pretext,²⁷ and occasionally, with the unjustifiable support of the judiciary state²⁸ and federal, in subversion of the rights and personal liberty of the citizen, indicates that a fear that the state officials might in some future time attempt further violations is at least justifiable.

These perversions of martial rule used by governors of the states in industrial and social conflict

(26) Governor Allen of Louisiana acting under express directions of Senator Huey Long, N. Y. Times, Aug. 6, 1934, p. 2, col. 6. See *Commonwealth ex rel. Wadsworth vs. Shortell*, 206 Pennsylvania, 165, 170-1.

(27) See *Miller vs. Ribers*, 31 F. Supp. 540; *Patten vs. Miller*, 190 Georgia, 165; *Hearon vs. Calus*, 178 South Carolina, 381; *Allen vs. Oklahoma City*, 175 Oklahoma, 421; *United States vs. Phillips*, 33 F. Supp. 261.

(28) *State ex rel. Mays vs. Brown*, 71 West Virginia, 519; *Ex parte Jones*, 71 West Virginia, 567.

(29) *United States ex rel. Palmer vs. Adams*, 26 F. (2d) 141, 144; *Bishop vs. Vandercook*, 228 Michigan 299, 309.

[Printer's Note: Footnote 29 not indicated on copy.]

to satisfy a personal need for uncontrolled power in given situations, wherein the civil rights of individuals were swept away by legislation or fiat dictated by an individual, indicate that in these trying days of war, limits must be set to military authority exercised in the name of necessity, lest we lose the liberties for which we fight.

“But it is insisted that the safety of the country in time of war demands that this broad claim for martial law shall be sustained. If this were true, it could be well said that a country, preserved at the sacrifice of all the cardinal principles of liberty, is not worth the cost of preservation.” *Ex parte Milligan, supra*, 126.

The doctrine that there can be a partial martial law, unproclaimed and unregulated except by the rule of the military commander, expressed in orders or regulations proclaimed by him and enforced in the civil courts in a territory within the continental limits of the United States and at the time not occupied by any foreign foe, belongs in the category of such perversions, and cannot be justified by any sound theory of civil, constitutional or military law. Its only justification lies in the doctrines of “state of siege” proclaimed by military commanders, generally speaking, in the governments of Europe. For a state of the United States or any portion thereof to be placed, in any essential function, or for citizens of the United States to be placed with regard to their fundamental rights, subject to the will of the commander alone, how-

ever well designed for their protection, [29] without any of the preliminaries above suggested,³⁰ up to the time when utter necessity requires the abolition of all civil rule for the preservation of the government, would seem to be a complete surrender of the guarantees of individual liberties confirmed in the Constitution of the United States.

The confusion in the authorities seems to arise in a failure to differentiate between a case where martial law is properly declared in civil disturbances³¹ and a case where the military is called upon to aid the civil power. In the latter case no special attributes³² should be ascribed either to the soldier or the commander. Ordinary civil law is enforced by a greater power.

“Thus the war power of the Federal Government is not created by the emergency of war, but it is a power given to meet that emergency. It is the power to wage war successfully and thus it permits the harnessing of the entire energies of the people in a supreme co-operative effort to preserve the nation. But even the war power does not remove constitutional limitations safeguarding essential liberties.”

(30) See *Manley vs. State*, 62 Texas Cr. 392, *Manley vs. State*, 69 Texas Cr., 502.

(31) See *Moyer vs. Peabody*, 212 U.S. 78.

(32) *Constantin vs. Smith*, 57 F. (2d), 227, 238, 241; *Bishop vs. Vandercook*, *supra*; *Franks vs. Smith*, 142 Kentucky 232; *Fluke vs. Canton*, 31 Oklahoma, 718; *Manley vs. State*, *supra*, 400.

Home Building and Loan Assn. vs. Blaisdell, *supra*, 426.

The replacement of the statutes of Congress, the courts and civil authority in this area can then be effected only by "martial law proper", under the definitions given. What then is the test? The court in the Milligan case says:

"It follows, from what has been said on this subject, that there are occasions when martial rule can be properly applied. If, in foreign invasion or civil war, the courts are actually closed, and it is impossible to administer criminal justice according to law, then, on the theatre of active military operations, where war really prevails, there is a necessity to furnish a substitute for the civil authority, thus overthrown, to preserve the safety of the army and society; and as no power is left but the military, it is allowed to govern by martial rule until the laws can have their free course. As necessity creates the rule, so it limits its duration; * * *. And so in the case of a foreign invasion, martial rule may become a necessity in one state, when, in another, it would be 'mere lawless violence.'" *Ex parte Milligan, supra*, 127. [30]

The concurring opinion did not controvert this holding. The concurring judges gave support to this doctrine, but held that Congress if the necessity were legislatively found, could declare martial law, as could the President under given circumstances.

It was vital to find whether "martial law proper" prevailed in Indiana for the determination of the case. If it prevailed, whether declared by Congress or the President, or in existence because of military necessity, a citizen could have been tried by military commission, although he was neither prisoner of war, spy, a resident of enemy country nor attached to the military forces. Otherwise, he could not. The recital by the court of the facts shows that the peril was extreme,³³ but held that martial law was not in effect.

No designation need be given to acts which the military sometimes are required to commit under the stress of war and of military necessity, such as the arrest and ejection of a federal judge from his lines by Andrew Jackson,³⁴ the refusal of General Cadwalader under Lincoln's order to obey the writ of the federal circuit court,³⁵ the seizure of Vallan-

(33) Open resistance to the measures deemed necessary to subdue a great rebellion, by those who enjoy the protection of government and have not the excuse even of prejudice of section to plead in their favor, is wicked; but resistance becomes an enormous crime, when it assumes the form of a secret political organization, armed to oppose the laws, and seeks by stealthy means to introduce the enemies of the country into peaceful communities, there to light the torch of civil war, and thus overthrow the power of the United States. Conspiracies like these, at such a juncture are extremely perilous; and those concerned in them are dangerous enemies of this country * * * ". *Ex parte Milligan, supra*, 130.

(34) See *Ex parte Milligan, supra*, 52.

(35) *Ex parte Merryman, supra*.

digham,³⁶ of Milligan.³⁷ The fact that a conscientious commander commits such acts at times to perform his mission does not always render them lawful. The power to suspend the writ of habeas corpus is given, so that a civil court cannot pass on legality of such acts in time of public danger. The rule of the commander is the rule of force. He may have the physical power to seize, to hold, to confine the individual and to disobey the orders of the court. It may be his military duty. Whether he has made himself civilly responsible for illegal acts can only be tried after the event, when the rule of force has ended. But such acts, however necessary, establish no doctrine of qualified martial law and are, in instances, unjustified by law. [31]

But it is too clear for debate that martial law does not come into existence under constitutional government until utter necessity compels the investment of one man with the power of life and death over citizen and soldier alike in a given area.³⁸ It is the law of self-defense among nations.

(36) *Ex parte Velandigham*, 28 Fed. Cas. 814, No. 16,816.

(37) *Ex parte Milligan*, *supra*.

(38) In Hawaii at the present time, pursuant to a proclamation of martial law, military commissions for violations of the laws of the United States or the Territory or the "rules, regulations, orders or policies of the military authorities" adjudge punishment commensurate with the offense committed and "may adjudge the death penalty in appropriate cases". General Order No. 4, Honolulu Star-Bulletin, Dec. 9, 1941.

Like self-defense, it is a use of elemental force sanctioned by common law, initiated solely by stark necessity and vanishing when the necessity no longer exists.³⁹ If military necessity does not exist, neither the declaration of war nor the proclamation of martial law can justify acts contrary to ordinary law.⁴⁰ On the other hand, where there is no declaration of martial law by Congress or the President or by the General in this area, and when there has not even been a suspension of the writ of habeas corpus, there is a strong implication that in the judgment of the political authorities no necessity justifying such action exists.

While a war is in progress, the question of whether military necessity requires the closing of the courts and the abrogation of civil authority for the time being and in a certain area, is one for the political or executive departments of the government. There should be a clear line of demarcation drawn by the political agencies between government by fiat, and by law.

The existence of military necessity is justifiable under a particular set of circumstances. In the event the military commander has taken measures under the guise of martial law when the military necessities did not actually require, he has been held civilly liable after the war is finished.⁴¹ [32] But it is

(39) Ex parte Milligan, *supra*.

(40) Sterling vs. Constantin, *supra*.

(41) The bright star in the crown of Andrew Jackson was the fact that although justly flushed

obrious during the clash of arms the evidence of military necessities cannot be adduced in a civil court. Therefore, such a tribunal should not be called at that time to declare whether the necessity exists.⁴² When the Congress in session has not declared martial law and the President has not recognized the existence of martial law by executive order closing the courts and even the military commander has not proclaimed martial law is in effect, a court cannot take the responsibility in view of the clear declaration of the Supreme Court of the United States that a martial law is not in effect unless the courts are closed. While it is true that

with triumph at New Orleans, he paid a fine in the federal court, because he had arrested the judge thereof upon the ground that the latter was interfering with the military security of his force. Actually, at the time of the ejection, peace had been proclaimed and, therefore, the military necessity did not exist. Jackson apparently recognized that he had no legal right to act on appearances where the fact did not justify action. He was brought into court on a charge of contempt before the same judge, who fined him. Jackson paid the fine. The apologists cite the fact, that Congress subsequently made Jackson whole for this expenditure in the last year of his life and after he had been twice President of the United States, as an argument for the existence of the power to act without sanction of actual necessity. See *Arguments Ex parte Milligan*, *supra*, 52, 94-7.

(42) See *Consolidated Coal & Coke Co. vs. Beale*, 282 F. 934 (D.C.) where it is said that a court cannot make a determination in advance that troops are necessary to quell an insurrection.

neither a declaration of the President,⁴³ nor of Congress,⁴⁴ nor of the military commander [41] would be binding upon a court eventually, if the necessity did not exist, until some political or military authority has faith enough in the position to proclaim a state of martial law, a court which is in fact open, should not find the existence of necessity as a fact.

All this points to the vital inconsistency here developed between the action taken by the civil authorities in a federal court bound by and acting under the guarantees of the Constitution of the United States and its amendments, and the claim that a military necessity has arisen so vital that its exigencies demand that citizens of the United States be confined to their places of lodging at hours dictated by a military commander. If such an emergency exists, and it may well be that it does, the Congress of the United States or the Executive, in the months since Pearl Harbor, could [33] have declared martial law or at least suspended the writ of habeas corpus in view of the situation. If the emergency exist, the military commander may be justified in seizing the body of Yasui and removing him from the military areas or zones. Of a certainty, if the military commander can allow a civil court to remain open to try violations of his orders, without support by force, military necessity cannot be so imperative that the fundamental safeguards must be abandoned. So long as the courts of the

(43) See *Sterling vs. Constantin*, *supra*.

(44) See *Ex parte Milligan*, *supra*.

United States are open, these tribunals are bound by Constitution and treaties of the United States and legislation of Congress. The proclamations or regulations of a military commander cannot be enforced by such tribunals.⁴⁵

But it is contended that there was an adoption of the proclamations of the military commander because the act of Congress passed three days earlier prescribed penalties for acts done in violation of the regulations issued with reference to certain areas or zones. Congress itself could not make constitutionally a distinction relating to the conduct of citizens based on their color race.⁴⁶ Such an intention is not to be found inadvertently.⁴⁷ Congress itself could not in loyal territory uninvaded make

(45) Marshall, C. J., says in considering a motion for a writ of habeas corpus in *Ex parte Bollman*, 8 U.S. 74, 93, where petitioner was charged with treason, "As preliminary to any investigation of the merits of this motion, this court deems it proper to declare that it disclaims all jurisdiction not given by the Constitution, or by the laws of the United States. * * * Courts which are created by written law, and whose jurisdiction is defined by written law, cannot transcend that jurisdiction."

(46) See *Retirement Board vs. Alton R. Co.*, 295 U.S. 330; opinion of the present Chief Justice, *Hague vs. Committee for Industrial Organization*, *supra*, 519. See also *Yick Wo vs. Hopkins*, 118 U.S. 369; *Buchanan vs. Warley*, 243 U.S. 60.

(47) "The issue is fraught also with great international significance in terms of our relations with colored peoples generally." McWilliams, "Moving the West-Coast Japanese", *Harper's Magazine*, September, 1942, Vol. 185, No. 1108, pages 359, 369.

acts of citizens criminal simply because such acts were in violation of orders to be issued in the future by a military commander.⁴⁸ Congress could have declared martial law [34] and thereupon the courts might have become adjuncts or agencies of the General commanding. Under these circumstances he might have had the power to legislate by regulation and create classes of citizens.

There are valid reasons for control of citizens of Japanese ancestry, but the test is color and race. An equally valid foundation can be found for control of persons of Italian, German⁴⁹ and Irish ancestry. A real basis in necessity might be found in the imposition of such regulations upon the eastern frontier after the landing of persons of German ancestry who were harbored in this country. But the history of this country contains too many examples of loyalty of persons of foreign extraction to justify any blanket treatment. The precedent, if valid, can be made to justify exile or detention of any citizen whom a military commander desires in a loyal state not under threat. If the military necessity existed and martial law was actually in effect, justification might be pleaded.

There are suggestions that control by curfew or

(48) *Schechter Poultry Corporation vs. United States*, 295 U.S. 495.

(49) The literature of the last World War contains abundant proof.

(50) See Act April 16, 1918 C. 55; 40 Stat. 531; 50 USCA, Sec. 21.

[Printer's Note: Footnote 50 not indicated on copy.]

detention or exile of civilians as to a given area interferes with a lower order of rights than the right to life. Such doctrine sounds strange in this country, with schoolbook memories of Jefferson's doctrine of revolution and Patrick Henry's preference for death.

This court, while not operating as an adjunct of a military commander, must apply ordinary law and protect the rights of a citizen in a criminal case. If Congress attempted to classify citizens based upon color or race and to apply criminal penalties for a violation of regulations, founded upon that distinction, the action is insofar void.

The power of Congress, however, during time of war over aliens of a country which is hostile to the United States is almost plenary, as is that of the President by a series of acts dating to the foundation of the Union.⁵¹ While in ordinary times such persons are entitled to the "equal protection of [35] the laws", when their country is at war with the United States, Congress or the President may intern, take into custody, restrain and control all enemy aliens within the territorial limits of the United States,⁵² and neither are restrained by any

(51) Act July 6, 1798 c.66 Secs. 1, 2, 3, 1 Stat. 577 R.S. Secs. 4068-4070. 50 USCA, Secs. 21-24.

(52) In 1813 upon petition for habeas corpus, the executive order requiring enemy aliens who were within 40 miles of tidewater to retire beyond that limit was upheld. *Lockington's Case*, Brightly, N. P. (Pa.) 269; *Lockington vs. Smith* (C.C. Mich.) 1848, 1 Pet. C.C. 466, Fed. Case. 8448; 50 USCA, Sec 21, p. 11.

constitutional guarantees from such action.⁵³ While the orders of General DeWitt, therefore, were void as respects citizens, unquestionably from the history of the proclamations, Congress would be well on notice that the General might intend to establish regulations relating to enemy aliens within the areas designated by the previous proclamations. The regulations, which make these acts crimes, by adoption thereof by act of Congress are thus valid with respect to aliens.

The only question now for the court to determine is as to whether Yasui, the defendant, is a citizen or an enemy alien.

Under the Constitution of the United States, Yasui, by virtue of his birth in the territorial limits of the United States and notwithstanding the fact that his parents were alien Japanese incapable of naturalization in the United States, had conferred upon him the inestimable right to citizenship in the United States.⁵⁴ By international law, however, he was also a citizen of Japan and subject of the Emperor of Japan. According to international law, also, he had, upon attaining majority but not before, the right of election as to whether he would accept citizenship in the United States or give his

(53) *DeLacey vs. United States*, 9 Cir. 249 F. 625; *Minotto vs. Bradley* (D.C. Ill.), 252 F. 600; *Halpern vs. Commanding Officer*, 248 F. 1003. See also *Deutsch-Australische &c. vs. United States*, 59 Ct. Cls, 450. See Proclamation No. 1364, April 6, 1917.

(54) *United States Wong Kim Ark*, 169 U.S. 649.

allegiance to the Emperor⁵⁵ to whom he was bound by race, the nativity of his parents and the subtle nuances of traditional mores engrained in his race by centuries of social discipline.

While, therefore, Congress might have set up tests or presumptions whereby the initiation or continuance of the relationship of citizenship in persons who held the dual status during minority might have been tested, as [36] it has done in case of naturalized citizens, or might have permitted segregation until evidence of citizenship were produced, no such intention is apparent in the legislation.

This election is a mental act.⁵⁶ The choice which

(55) Perkins, Secretary of Labor vs. Elg, 307 U.S. 325; Perkins, Secretary of Labor vs. Elg, 99 F. (2d) 408; In re Arla Marjorie Reid, 6 F. Supp. 800; United States vs. Reid, 73 F. (2d) 153.

(56) "In cases of double allegiance, the child when he becomes of age 'is required to elect between the country of his residence and the country of his alleged technical allegiance. Of this election two incidents are to be observed; when once made it is final, and it requires no formal act, but may be inferred from the conduct of the party from whom the election is required.'" Moore International Law Digest, Volume III, pages 545, 546, Section 430. Mr. Porter, Acting Secretary of State to Mr. Winchester, Minister to Switzerland, September 14, 1885, Fro. Rel. 1885, 811.

See *Banning vs. Penrose* (D.C.), 255 F. 159, where considering a case of a person who had become naturalized here and returned to the country of his nativity, "It is a question more of intention than anything else."

exists in the mind of a person is exemplified by acts. The intention, however, to make an election can be discovered by a tribunal as can criminal intent, knowledge or any other mental state. Notwithstanding the expression of some liberal authorities, tender in times of peace to preserve civil rights, such a mental state may be found in a criminal case contrary to the sworn evidence, protestations and declarations of a defendant.

The evidence in this case shows that during the minority of the defendant he made with his parents a trip to Japan when he was about nine years old and remained there during the summer vacation, visiting his grandfather, who was a resident of Japan and a subject of the Japanese Emperor. He attended a Japanese language school in the United States and apparently became proficient in speaking the Japanese language, which he testified was used to considerable extent in his own home. His further education was in the public schools and in the University of Oregon, where he received both an arts and a law degree. During the time that he was taking his arts course at the University, he took the course in military training prescribed and, unquestionably, compulsory. Therefore, upon his graduation with acceptable standards he received a commission as Second Lieutenant in the Officers Reserve Corps, and upon acceptance thereof, took the oath of allegiance to the United States. [37]

Such acts were all during minority and, although they may indicate tendencies, are not evidence of

the election to accept citizenship in the United States or allegiance to the Japanese Emperor. After his majority, he continued in residence in this country, a circumstance which all agree raises an inference that he intended to claim citizenship here. He likewise testified that he voted in the elections, which is another factor inviting attention. It must be remembered, however, that he was still a student in the University of Oregon and received his degree in 1939. Residence for the purpose of education does not ordinarily contain any inference as to intended domicile or citizenship.

The record shows that the father of the defendant was decorated by the Emperor of Japan. Within a few months after Yasui had been admitted to the Bar of the State of Oregon, he was, at the instigation of his father, employed by the Consulate General of Japan at Chicago.

While so employed, Yasui followed the orders of the Consulate General of Japan and made speeches, setting forth the philosophy and purposes of the military caste of Japan as propaganda agent for the Emperor. While in this position, he was registered twice by the Consulate General as a propaganda agent for a foreign power, pursuant to the regulations issued by the State Department of the United States. It is true that he testifies that there was an American citizen named Murphy, presumably not of Japanese extraction, who was employed in the same work, but we are not concerned here with the employment of Murphy or his purposes

or the innocence of his intention. Obviously, he had no election to make. The question before the court is as to what election Yasui made.

Yasui remained as a propaganda agent until after the declaration of war by this country against Japan and after the treacherous attack by the armed forces of Japan upon territory of the United States in the Islands of the Pacific.

The court thus concludes from these evidences that defendant made an election and chose allegiance to the Emperor of Japan, rather than citizenship in the United States at his majority. The court concludes that he served [38] the purpose and philosophy of the ruling caste of Japan as a propaganda agent because he could speak English, and only resigned when it seemed apparent that he could no longer serve the purposes of his sovereign in that office, but could do better execution in the event he could be commissioned an officer in the armed forces of the United States on active service.

Since Congress provided for the punishment of persons violating the proclamations of the commanding officers, and since Yasui is an alien who committed a violation of this act, which included by reference the regulations of the commander referring to aliens, the court finds him guilty.

[Endorsed]: Filed November 17, 1942. [39]

And afterwards, to wit, on Wednesday, the 18th day of November, 1942, the same being the 15th

Judicial day of the Regular November, 1942, Term of said Court; present the Honorable James Alger Fee, United States District Judge, presiding, the following proceedings were had in said cause, to wit: [40]

In the District Court of the United States
for the District of Oregon

November 18, 1942

No. C-16056

UNITED STATES OF AMERICA

vs.

MINORU YASUI

SENTENCE

Indictment:

Public Proclamation No. 3 of the Western Defense Command and Public Law No. 503, 77th Congress approved March 21, 1942.

Now at this day comes the plaintiff by Mr. Carl C. Donagh, United States Attorney, and Mr. Charles S. Burdell, Special Assistant to the Attorney General, and the defendant, above named, in his own proper person and by Mr. John A. Collier, of counsel; and the Court having heretofore found the said defendant guilty as charged in the indictment herein, and this being the day set for passing of sentence,

It Is Adjudged by the Court that the defendant

Minoru Yasui is guilty of the offense of deliberately, wilfully and voluntarily committing an act in an area designated as a military area by a military commander, said defendant being a person of Japanese ancestry.

Whereupon, the said defendant, waiving time for passing sentence, is asked if he has anything to say why sentence should not now be pronounced against him, and no sufficient cause being shown,

It Is Further Adjudged that the said defendant, Minoru Yasui, do pay a fine of Five Thousand Dollars and be imprisoned for a term of One Year and from and after the expiration of said term until said fine be paid; that said defendant be committed to the custody of the Attorney General of the United States or his authorized representative who will designate the place of confinement of said defendant; and that said defendant stand committed until this sentence be performed or until he be otherwise discharged according to law.

Dated this 18th day of November, 1942, at Portland, Oregon.

JAMES ALGER FEE

Judge

[Endorsed]: Filed November 18, 1942. [41]

And Afterwards, to wit, on Tuesday, the 15th day of December, 1942, the same being the 40th Judicial day of the Regular November, 1942, Term of said

Court; present the Honorable James Alger Fee, United States District Judge, presiding, the following proceedings were had in said cause, to wit: [42]

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO FILE BILL
OF EXCEPTIONS

On application of the defendant, it is

Ordered by the Court that the defendant, appellant in the appeal filed in this case, may have until the 9th day of January, 1943, within which time to procure to be settled and filed with the Clerk of this Court a Bill of Exceptions.

Dated this 15th day of December, 1942.

JAMES ALGER FEE

District Judge

[Endorsed]: Filed December 15, 1942. [43]

And Afterwards, to wit, on the 6th day of December, 1942, there was duly Filed in said Court, a Stipulation designating contents of record on appeal, in words and figures as follows, to wit: [44]

[Title of District Court and Cause.]

STIPULATION

It is hereby stipulated between the plaintiff and the defendant that the Clerk of the Court shall in-

clude in the record on appeal in this cause, the following documents:

Indictment
Stipulation re Amendment of Indictment
Plea
Record of Trial June 12, 1942
Order Overruling Defendant's Motion for a
Verdict and The Verdict of the Court
Judgment
Order Extending Time for the Signing and
Filing of Bill of Exceptions
Bill of Exceptions
Assignments of Error
This Stipulation.

Dated this 6th day of January, 1943.

CARL C. DONAUGH

United States Attorney

E. F. BERNARD

Attorney for Defendant

[Endorsed]: Filed January 6, 1943. [45]

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD

United States of America,
District of Oregon—ss.

I, G. H. Marsh, Clerk of the District Court of
the United States for the District of Oregon, do

hereby certify that the foregoing pages numbered from 1 to 45 inclusive, constitute the transcript of record on appeal from a judgment and sentence of said Court in a criminal cause therein numbered C-16056, in which the United States of America is plaintiff and appellee, and Minoru Yasui is defendant and appellant; that said transcript has been prepared by me in accordance with the stipulation filed by said appellant and in accordance with the rules of Court; that I have compared the foregoing transcript with the original record thereof and that the foregoing transcript is a full, true and correct transcript of the record and proceedings had in said Court in said cause, as the same appear of record and on file at my office and in my custody, prepared in accordance with the said stipulation and rules of Court.

I further certify that I am transmitting with said transcript of record on appeal, the original Bill of Exceptions and the original Assignment of Errors filed in said cause by the said appellant.

I further certify that the cost of the foregoing transcript is \$5.00 for filing Notice of Appeal, and \$21.80 for comparing and certifying the within transcript, making a total of \$26.80 and that the same has been paid by the said appellant.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at Portland, in said District, this 8th day of January, 1943.

[Seal]

G. H. MARSH

Clerk [46]

In the District Court of the United States
For the District of Oregon

No. C-16056

UNITED STATES OF AMERICA,
Plaintiff,

vs.

MINORU YASUI,
Defendant.

BILL OF EXCEPTIONS

Be It Remembered that on the 12th day of June, 1942, the above entitled cause came on regularly for trial in the District Court of the United States for the District of Oregon before James Alger Fee, Judge presiding, and sitting without a jury at the request and on the stipulation of the parties, the plaintiff appearing by Carl C. Donough, United States Attorney, J. Mason Dillard, Assisant United States Attorney, and Charles S. Burdell, Special Assistant to the Attorney General, and the defendant appearing by E. F. Bernard, his attorney, and Green & Landye (by B. A. Green and Will Roberts), Dey, Hampson & Nelson (by R. R. Morris and Jack M. McLaughlin), Hart, Spencer, McCulloch & Rockwood (by Omar C. Spencer and Manley B. Strayer), and Maguire, Shields, Morrison & Biggs (by Randall Kester), and Gus J. Solomon, all appearing as *Amici Curiae*.

After the opening statements of the attorneys for

the parties the plaintiff produced and examined as witnesses, William H. Maas, Vincent M. Quinn, Ray Mize, Dewart E. Wagner, Alan Davis, W. G. Everson and Leslie M. Scott. The defendant then testified in his own behalf and the plaintiff produced and examined in rebuttal Gerhard Goetz. No other witnesses were produced or examined nor was any testimony given, save and except by the witnesses herein mentioned, and a transcript of all the testimony given or [47] offered throughout the trial, and of all the proceedings had at the trial, except the ruling of the court on the defendant's motion for a judgment and the exceptions to the ruling taken by the defendant and allowed by the court, is hereunto attached, marked Exhibit "X" and made a part of this Bill of Exceptions.

The testimony of William H. Maas is set forth in full on pages 97 to 99 both inclusive of said Exhibit X; the testimony of Vincent M. Quinn is set forth in full on pages 100 to 108 both inclusive of said Exhibit X; the testimony of Ray Mize is set forth in full on page 107 and on pages 109 to 117 both inclusive of said Exhibit X; the testimony of Dewart E. Wagner is set forth in full on pages 117 to 122 both inclusive of said Exhibit X; the testimony of Alan Davis is set forth in full on pages 124 to 129 both inclusive of said Exhibit X; the testimony of W. G. Everson is set forth in full on pages 129 to 136 both inclusive of said Exhibit X; and the testimony of Leslie M. Scott is set forth in full on pages 136 to 140 both inclusive of said Exhibit

X; and the testimony of the defendant, Minoru Yasui, is set forth in full on pages 148 to 200 both inclusive of said Exhibit X; and the testimony of Gerhard Goetz is set forth in full on pages 201 to 206 both inclusive of said Exhibit X.

The exhibits introduced upon the trial of the case are as follows:

Government's Exhibit 2 which consists of a certified copy of a Foreign Official Status Notification and which, save and except as to the certificate which is not material to any question involved in the case, reads as follows:

“To be prepared in Duplicate

United States of America

Department of State

Foreign Official Status Notification

Division of Protocol June 21, 1941

Dept. of State

Date June 17, 1941

To the Secretary of State:

In accordance with applicable instructions attached hereto, and in connection with the act of June 15, 1917, the act of June 8, 1938, as amended, the act of June 28, 1940, [48] the act of July 1, 1940, and the act of September 16, 1940, I desire to submit the following information for the purpose of regularizing my official status and of claiming any exemption from registration accorded my status under the above-mentioned Acts and regulations promulgated thereunder:

JAPAN

1. Full name Minoru (First name) Yasui (Surname).

YASUI, MINORU

Do not write in this space

2. Name of government and agency or department thereof, if any, being served, Consulate General of Japan, at Chicago, Illinois.

3. Present nationality, American (U. S. citizen).

4. Previous nationality or nationalities, if any,

5. (a) Place of birth, Hood River, Oregon, United States of America.

(b) Date of birth, October 19th, 1916.

6. Port or place, date and manner of last arrival in United States and name of vessel, if any,

7. Status under which last admitted (check one): Immigrant Temporary visitor

Government official or employee. Other (Please describe)

8. Name used at time of last entry, if different from present name,

9. Name and nationality of husband or wife, and address if separate from signer's,

10. Names, ages and nationalities of children, and their addresses if different from signer's,

11. Names and nationalities of other relatives who are members of signer's household,

12. Names and nationalities of personal and domestic employees who are members of signer's household,

13. Capacity in which signer is now serving, giving title of position, if any, Secretary

14. Date of assumption of present duties in the United States, April 1, 1940

15. Detailed statement of signer's present and proposed activities, including the place or places of performance and for whom performed or to be performed, Secretarial Work, and Research: To Be Performed For the Consulate General of Japan, at Chicago, Illinois. [49]

16. Nature and place or places of occupation or employment during the last 5 years,

September, 1933 to June, 1939, student, at University of Oregon, Eugene, Oregon.

June, 1939 to November, 1939, ranch hand, Hood River, Oregon.

November, 1939 to April, 1940, practice of law, Portland, Oregon.

April, 1940 to present date, secretary, Consulate General of Japan, Chicago, Illinois.

17. Business address, or addresses if more than one, 1615 Tribune Tower, Chicago, Illinois.

18. Home address in the United States, or addresses if more than one,

1032 N. Dearborn St., Chicago, Illinois.

704-12th Street, Hood River, Oregon.

19. If declaration to become an American citizen has been filed, state the date and place of application,

20. If visiting in the United States temporarily as a tourist, or for personal business or pleasure,

or if passing in transit through the United States, the following additional information must be furnished:

(a) Whether on private business or for pleasure and if on private business, state the agency, firm, or persons represented,

(b) Temporary address in United States,

(c) Date of proposed departure,

(d) Port or place of proposed departure.

(e) Country to which proceeding,

I will immediately notify the Secretary of State through appropriate channels of any change in my status, activities, or in the other information set forth in this notification.

MINORU YASUI

(Signature)''

A picture of the defendant is attached to said government's Exhibit 2.

Government's Exhibit 3, which consists of a certified copy of a letter dated March 2, 1942, from Henry L. Stimson to Lt. Gen. John L. DeWitt, reads as follows: [50]

“Copy

War Department
Washington

March 2, 1942

Lieutenant General John L. DeWitt,
Commander, Western Defense Command,
San Francisco, California.

Dear General DeWitt:

By letter dated February 20, 1942, I designated you as one of the appropriate Military Commanders to exercise the powers vested in me under Executive Order No. 9066, February 19, 1942, and I delegated to you such powers as are necessary to carry out the purposes of that Executive Order. Incident to the exercise of those powers, you are authorized to employ without regard to Civil Service or Classification laws or regulations, all persons or agencies necessary to carry out your duties. You are also authorized to employ the service of any association, firm, company, or corporation in furtherance of your mission. You will fix the rates of compensation so as to correspond as nearly as possible to the rates prevailing for similar service in the community in which the services are to be rendered.

Under the terms of Executive Order No. 9001, dated December 27, 1941, and subject to the limitations thereof and of the Act of December 18, 1941 (First War Powers Act, 1941, Public Law

354—77th Congress), I am expressly authorized to delegate further the powers therein delegated to me. Pursuant thereto, I delegate to you, within the limits of the amounts appropriated by the Congress, the power to enter into contracts and into amendments or modifications of contracts heretofore or hereafter made, and to make advance, progress, and other payments thereon, without regard to the provisions of law relating to the making, performance, amendment, or modification of contracts.

In order to remove any doubt as to your authority to obligate funds, I specifically authorize you to obligate funds in such amounts as you deem necessary to effectuate the purposes of the Executive Order, and of your instructions, from any funds in an allotted status available to you, or to incur obligations in excess of such funds, reporting deficiencies to the appropriate chief of supply arm or service.

Sincerely yours,

(S) HENRY L. STIMSON

Secretary of War.

A True Copy:

The letter of February 20, 1942, referred to above, was Secret.

H. B. LEWIS

Colonel, A. G. D. Adjutant General." [51]

Government's Exhibit 4 which consists of a certified copy of Public Proclamation No. 1, Head-

quarters Western Defense Command and Fourth Army, March 2, 1942, and which, save and except as to the certificate which is not material to any question involved in this case, reads as follows:

“Whereas, By virtue of orders issued by the War Department on December 11, 1941, that portion of the United States lying within the States of Washington, Oregon, California, Montana, Idaho, Nevada, Utah and Arizona and the Territory of Alaska has been established as the Western Defense Command and designated as a Theatre of Operations under my command; and

Whereas, By Executive Order No. 9066, dated February 19, 1942, the President of the United States authorized and directed the Secretary of War and the Military Commanders whom he may from time to time designate, whenever he or any such designated commander deems such action necessary or desirable, to prescribe military areas in such places and of such extent as he or the appropriate Military Commander may determine, from which any or all persons may be excluded, and with respect to which the right of any person to enter, remain in, or leave shall be subject to whatever restrictions the Secretary of War or the appropriate Military Commander may impose in his discretion; and

Whereas, The Secretary of War on February 20, 1942, designated the undersigned as

the Military Commander to carry out the duties and responsibilities imposed by said Executive Order for that portion of the United States embraced in the Western Defense Command; and

Whereas, The Western Defense Command embraces the entire Pacific Coast of the United States which by its geographical location is particularly subject to attack, to attempted invasion by the armed forces of nations with which the United States is now at war, and, in connection therewith, is subject to espionage and acts of sabotage, thereby requiring the adoption of military measures necessary to establish safeguards against such enemy operations:

Now Therefore, I, J. L. DeWitt, Lieutenant General, U. S. Army, by virtue of the authority vested in me by the President of the United States and by the Secretary of War and my powers and prerogatives as Commanding General of the Western Defense Command, do hereby declare that:

1. The present situation requires as a matter of military necessity the establishment in the territory embraced by the Western Defense Command of Military Areas and Zones thereof as defined in Exhibit 1, hereto attached, and as generally shown on the map attached hereto and marked Exhibit 2. [52]

2. Military Areas Nos. 1 and 2, as particu-

larly described and generally shown hereinafter and in Exhibits 1 and 2 hereto, are hereby designated and established.

3. Within Military Areas Nos. 1 and 2 there are established Zone A-1, lying wholly within Military Area No. 1; Zones A-2 to A-99, inclusive, some of which are in Military Area No. 1, and the others in Military Area No. 2; and Zone B, comprising all that part of Military Area No. 1 not included within Zones A-1 to A-99, inclusive; all as more particularly described and defined and generally shown hereinafter and in Exhibits 1 and 2.

Military Area No. 2 comprises all that part of the States of Washington, Oregon, California and Arizona which is not included within Military Area No. 1, and is shown on the map (Exhibit 2) as an unshaded area.

4. Such persons or classes of persons as the situation may require will by subsequent proclamation be excluded from all of Military Area No. 1 and also from such of those zones herein described as Zones A-2 to A-99, inclusive, as are within Military Area No. 2.

Certain persons or classes of persons who are by subsequent proclamation excluded from the zones last above mentioned may be permitted, under certain regulations and restrictions to be hereafter prescribed, to enter upon or remain within Zone B.

The designation of Military Area No. 2 as

such does not contemplate any prohibition or regulation or restriction except with respect to the zones established therein.

5. Any Japanese, German or Italian alien, or any person of Japanese Ancestry now resident in Military Area No. 1 who changes his place of habitual residence is hereby required to obtain and execute a "Change of Residence Notice" at any United States Post Office within the States of Washington, Oregon, California and Arizona. Such notice must be executed at any such Post Office not more than five nor less than one day prior to any such change of residence. Nothing contained herein shall be construed to affect the existing regulations of the U. S. Attorney General which require aliens of enemy nationalities to obtain travel permits from U. S. Attorneys and to notify the Federal Bureau of Investigation and the Commissioner of Immigration of any change in permanent address.

6. The designation of prohibited and restricted areas within the Western Defense Command by the Attorney General of the United States under the Proclamations of December 7 and 8, 1941, and the instructions, rules and regulations prescribed by him with respect to such prohibited and restricted areas, are hereby adopted and continued in full force and effect. [53]

The duty and responsibility of the Federal

Bureau of Investigation with respect to the investigation of alleged acts of espionage and sabotage are not altered by this proclamation.

J. L. DeWITT,
Lieutenant General,
U. S. Army,
Commanding."

Exhibit 1 referred to in Government's Exhibit 5 contains a description of Military Area No. 1, and Exhibit 2 referred to in Government's Exhibit 4 is a map showing the territory described and from these Exhibits it is shown that the city of Portland is included in the area classified as "Prohibited Zone 'A-1'".

Government's Exhibit 5 which consists of a certified copy of Public Proclamation No. 3, Headquarters, Western Defense Command and Fourth Army, March 24, 1942, reads as follows:

"To: The people within the States of Washington, Oregon, California, Montana, Idaho, Nevada, Utah and Arizona, and the Public Generally:

Whereas, By Public Proclamation No. 1, dated March 2, 1942, this headquarters, there were designated and established Military Areas Nos. 1 and 2 and Zones thereof, and

Whereas, By Public Proclamation No. 2, dated March 10, 1942, this headquarters, there were designated and established Military Areas Nos. 3, 4, 5 and 6 and Zones thereof, and

Whereas, The present situation within these Military Areas and Zones requires as a matter of military necessity the establishment of certain regulations pertaining to all enemy aliens and all persons of Japanese ancestry within said Military Areas and Zones thereof:

Now, Therefore, I, J. L. DeWitt, Lieutenant General, U. S. Army, by virtue of the authority vested in me by the President of the United States and by the Secretary of War and my powers and prerogatives as Commanding General, Western Defense Command, do hereby declare and establish the following regulations covering the conduct to be observed by all alien Japanese, all alien Germans, and all alien Italians, and all persons of Japanese ancestry residing or being within the Military Areas above described, or such portions thereof as are hereinafter mentioned: [54]

1. From and after 6:00 A. M., March 27, 1942, all alien Japanese, all alien Germans, all alien Italians, and all persons of Japanese ancestry residing or being within the geographical limits of Military Area No. 1, or within any of the Zones established within Military Area No. 2, as those areas are defined and described in Public Proclamation No. 1, dated March 2, 1942, this headquarters, or within the geographical limits of the designated Zones established within Military Areas Nos. 3, 4, 5,

and 6, as those areas are defined and described in Public Proclamation No. 2, dated March 16, 1942, this headquarters, or within any of such additional Zones as may hereafter be similarly designated and defined, shall be within their place of residence between the hours of 8:00 P. M. and 6:00 A. M., which period is hereinafter referred to as the hours of curfew.

2. At all other times all such persons shall be only at their place of residence or employment or traveling between those places or within a distance of not more than five miles from their place of residence.

3. Nothing in paragraph 2 shall be construed to prohibit any of the above specified persons from visiting the nearest United States Post Office, United States Employment Service Office, or office operated or maintained by the Wartime Civil Control Administration, for the purpose of transacting any business or the making of any arrangements reasonably necessary to accomplish evacuation; nor be construed to prohibit travel under duly issued change of residence notice and travel permit provided for in paragraph 5 of Public Proclamations Numbers 1 and 2. Travel performed in change of residence to a place outside the prohibited and restricted areas may be performed without regard to curfew hours.

4. Any person violating these regulations will be subject to immediate exclusion from the

Military Areas and Zones specified in paragraph 1 and to the criminal penalties provided by Public Law No. 503, 77th Congress, approved March 21, 1942, entitled: "An Act to Provide a Penalty for Violation of Restrictions or Orders with Respect to Persons Entering, Remaining in, Leaving or Committing Any Act in Military Areas or Zone." In the case of any alien enemy, such person will in addition be subject to immediate apprehension and internment.

5. By subsequent proclamation or order there will be prescribed those classes of persons who will be entitled to apply for exemptions from exclusion orders hereafter to be issued. Persons granted such exemption will likewise and at the same time also be exempted from the operation of the curfew regulations of this proclamation.

6. After March 31, 1942, no person of Japanese ancestry shall have in his possession or use or operate at any time or place within any of the Military Areas 1 to 6 inclusive, as established and defined in Public Proclamations Nos. 1 and 2, above mentioned any of the following items: [55]

- (a) Firearms.
- (b) Weapons or implements of war or component parts thereof.
- (c) Ammunition.
- (d) Bombs.

- (e) Explosives or the component parts thereof.
- (f) Short-wave radio receiving sets having a frequency of 1,750 kilocycles or greater or of 540 kilocycles or less.
- (g) Radio transmitting sets.
- (h) Signal devices.
- (i) Codes or ciphers.
- (j) Cameras.

Any such person found in possession of any of the above named items in violation of the foregoing will be subject to the criminal penalties provided by Public Law No. 503, 77th Congress, approved March 21, 1942, entitled: "An Act to Provide a Penalty for Violation of Restrictions or Orders with Respect to Persons Entering, Remaining in, Leaving or Committing Any Act in Military Areas or Zone."

7. The regulations herein prescribed with reference to the observance of curfew hours by enemy aliens, are substituted for and supersede the regulations of the United States Attorney General heretofore in force in certain limited areas. All curfew exemptions heretofore granted by the United States Attorneys are hereby revoked effective as of 6:00 a. m., PWT, March 27, 1942.

8. The Federal Bureau of Investigation is designated as the agency to enforce the foregoing provisions. It is requested that the civil police within the states affected by this Proc-

lamation assist the Federal Bureau of Investigation by reporting to it the names and addresses of all persons believed to have violated these regulations.

J. L. DeWITT

Lieutenant General,
U. S. Army
Commanding

A True Copy:

H. B. LEWIS

Colonel, A.G.D.

Adjutant General."

Government's Exhibit 6 which consists of a certified copy of Public Proclamation No. 5, Headquarters, Western Defense Command and Fourth Army, dated March 30, 1942, and which reads as follows:

To: The people within the States of Washington, Oregon, California, Montana, Idaho, Nevada, Utah and Arizona, and the Public Generally:

Whereas, by Public Proclamation No. 1, dated March 2, 1942, this headquarters, there were designated and established Military Areas Nos. 1 and 2 and Zones thereof, and [56]

Whereas, by Public Proclamation No. 2, dated March 16, 1942, this headquarters, there were designated and established Military Areas Nos. 3, 4, 5 and 6 and Zones thereof, and

Whereas, the present situation within these

Military Areas and Zones requires as a matter of military necessity the establishment of certain regulations, as set forth hereinafter:

Now, Therefore, I, J. L. DeWitt, Lieutenant General, U. S. Army, by virtue of the authority vested in me by the President of the United States and by the Secretary of War and my powers and prerogatives as Commanding General, Western Defense Command, do hereby declare and establish the following regulations covering the conduct to be observed by all alien Japanese, all alien Germans, all alien Italians, and all persons of Japanese ancestry residing or being within the Military Areas above described:

Prior to and during the period of exclusion and evacuation of certain persons or classes of persons from prescribed Military Areas and Zones, persons otherwise subject thereto but who come within one or more of the classes specified in (a), (b), (c), (d), (e) and (f), below, may make written application for exemption from such exclusion and evacuation. Application Form WDC-PM 5 has been prepared for that purpose and copies thereof may be procured from any United States Post Office or United States Employment Service office in the Western Defense Command by persons who deem themselves entitled to exemption.

The following classes of persons are hereby authorized to be exempted from exclusion and evacuation upon the furnishing of satisfactory proof as specified in Form WDC-PM 5:

(a) German and Italian aliens seventy or more years of age.

(b) In the case of German and Italian aliens, the parent, wife, husband, child of (or other person who resides in the household and whose support is wholly dependent upon) an officer, enlisted man or commissioned nurse on active duty in the Army of the United States (or any component thereof). U. S. Navy, U. S. Marine Corps, or U. S. Coast Guard.

(c) In the case of German and Italian aliens, the parent, wife, husband, child of (or other person who resides in the household and whose support is wholly dependent upon) an officer, enlisted man or commissioned nurse who on or since December 7, 1941, died in line of duty with the armed services of the United States indicated in the preceding subparagraph.

(d) German and Italian aliens awaiting naturalization who had filed a petition for naturalization and who had paid the filing fee therefor in a court of competent jurisdiction on or before December 7, 1941. [57]

(e) Patients in hospital, or confined elsewhere, and too ill or incapacitated to be removed therefrom without danger to life.

(f) Inmates of orphanages and the totally deaf, dumb or blind.

The applicant for exemption will be required to furnish the kinds of proof specified in Form WDC-PM 5 in support of the application. The certificate of exemption from evacuation will also include exemption from compliance with curfew regulations, subject, however, to such future proclamations or orders in the premises as may from time to time be issued by this headquarters. The person to whom such exemption from evacuation and curfew has been granted shall thereafter be entitled to reside in any portion of any prohibited area, including those areas heretofore declared prohibited by the Attorney General of the United States.

J. L. DeWITT

Lieutenant General,
U. S. Army
Commanding

A True Copy:

H. B. LEWIS

Colonel, A.G.D.

Adjutant General."

Government's Exhibit 7 which is the original birth certificate of Minoru Yasui, the defendant in this case, filed in the Vital Statistics Division of the Oregon State Board of Health, and which reads as follows:

“Oregon State Board of Health
Division of Vital Statistics

CERTIFICATE OF BIRTH

Register No. 159

Place of Birth

County of

of

City of Hood River. (No. Third Street; Ward)

Full Name of Child—Minoru Yasui.

If child is not named, make supplemental report.

Sex of Child—Male.

Twin, 1. Triplet, or other. Number and in order
3 of birth. (To be answered only in event of plural
births.)

Legitimate? Yes.

Date of Birth—Oct. 19, 1916.

Father:

Full Name—Masuo Yasui.

Residence—Hood River, Ore.

Age at Last Birthday—29.

Color or Race—Japanese.

Birthplace—Japan.

Occupation—General Merchant.

Number of children born to this mother, in-
cluding present birth—3.

Mother:

Full Maiden Name—Shidzu Miyake.

Residence—Hood River, Ore.

Age at Last Birthday—27.

Color or Race—Japanese.

Birthplace—Japan.

Occupation—Housewife.

Number of children of this mother, now living, including present birth—3.

Were precautions taken against ophthalmia neonatorum?—Yes. [58]

CERTIFICATE OF ATTENDING PHYSICIAN OR MIDWIFE*

I hereby certify that I attended the birth of this child, who was born alive at 5:30 P. M. on the date above stated.

(Signature)

H. L. DUMBLE, M. D.

Physician

Address

Hood River, Oregon.

Oct. 31, 1916.

J. EDGINGTON,

Registrar.

Given name added from a supplemental report
Nov. 10, 1916.

A. L. McBRIDE

Asst. State Registrar

N.B.—In case of more than one child at birth, a

*When there was no attending physician or midwife, then the father, householder, etc., should make this return. A stillborn child is one that neither breathes nor shows other evidence of life after birth.

Separate Return must be made for each, and the number of each, in order of birth, stated. This certificate must be filed by the attending Physician or Midwife with the Local Registrar within 10 days after birth."

Government's Exhibit 8 which consists of a certified copy of General Orders No. 1, Headquarters, Western Defense Command and Fourth Army, dated December 11, 1941, and which reads as follows:

"General Orders
Number 1

1. The following War Department radiogram, December 11, 1941, is quoted for the information and guidance of all concerned:

"The activation of the Western Defense Command including Alaska, is hereby confirmed. It is designated as a theater of operations. The Fourth Army, Second Air Force, Fourth Air Force and Ninth Corps Area, including attached units are assigned to this command. Lieutenant General John L. DeWitt is designated as Commander."

2. Pursuant to the authority contained in the radiogram quoted above, the undersigned assumes command of the Western Defense Com-

mand and retains command of the Fourth Army.

J. L. DeWITT

Lieutenant General,
U. S. Army,
Commanding.

(Stamp) (Headquarters Western Defense
Command and Official Copy Fourth Army)

Distribution: "A", "B", "G" & "J".

Ninth Corps Area 1000

Second Air Force 500

Fourth Air Force 500

11th Naval Dist. 10

12th Naval Dist. 10

13th Naval Dist. 10

A True Copy:

H. B. LEWIS

Colonel, A.G.D.

Adjutant General." [59]

Government's Exhibit 9 which consists of a certified copy of a telegram dated December 11, 1941, addressed to Commanding General, Fourth Army, and signed "Marshall", and which reads as follows:

Washington DC

Dec 11, 1941,

621 PM

“Priority

Commanding General

Fourth Army

Pres of SF, Calif

The activation of the Western Defense Command including Alaska, is hereby confirmed. It is designated as a theatre of operations. The Fourth Army, Second Air Force, Fourth Air Force and Ninth Corps Area, including attached units are assigned to this command. Lieutenant General John L. DeWitt is designated as commander.

MARSHALL

(Stamp) (Headquarters Western Defense Command and Official Copy Fourth Army)

A True Copy:

H. B. LEWIS

Colonel, A.G.D.

Adjutant General.”

Defendant's Exhibit 1 which consists of a registration card with the Department of State for Minoru Yasui, the defendant, and which reads as follows:

“Department of State

Washington

Minoru Yasui

has notified the Secretary of State of his (or

her) status in the United States as an official (or employee) of the Japanese Government.

(Sgd) G. T. SUMMERLIN

GEORGE T. SUMMERLIN,
Chief,

Division of Protocol.

Date June 21, 1941.

The Secretary of State must be notified of any change in the status of the holder of this receipt."

Defendant's Exhibit 10 which consists of a Stipulation entered into between the plaintiff and the defendant and which reads as follows: [60]

"In the District Court of the United States
For the District of Oregon

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MINORU YASUI,

Defendant.

STIPULATION

It is hereby stipulated by the parties to the above entitled action that at the trial of the action the following facts are admitted to be true and proof thereof is waived, to-wit:

During and prior to the year 1916 and at the time of the birth of the defendant, Minoru Yasui, the father of the defendant, Masuo

Yasui, and Shidzu Yasui, his wife, the mother of the defendant were residents and inhabitants of Hood River, Oregon; that during all of said time, the defendant's father hereinbefore named was engaged in business in Hood River, Oregon, as a merchant, and that during all of said times, the defendant's mother hereinbefore named was a housewife, and that neither of the defendant's said parents were in the diplomatic service of any country.

CHARLES S. BURDELL

Of attorneys of the
United States of America

E. F. BERNARD

Attorney for the Defendant."

Defendant's Exhibit 11 which consists of a telegram addressed to Minoru Yasui and signed M. Yasui, and which reads as follows:

"Western Union

PRA592 27 NT—K1 Hoodriver Org 7

Minoru Yasui—

306 Dearborn Plaza

1032 North Dearborn St. Chgo—

As war has started your country needs your service as a United States reserve officer I as your father strongly urge you to respond to the call immediately—

M. YASUI."

Defendant's Exhibit 12 which is a letter dated December 8, 1941, addressed to 2nd Lt. Minoru Yasui, and signed E. P. Curtis, and which reads as follows: [61]

“Headquarters Second Military Area
225 U. S. Court House
Portland, Oregon

EPC/f

December 8, 1941

201-Yasui, Minoru

2nd Lt., Inf-Res.

Subject: Extended Active Duty

To: 2nd Lt. Minoru Yasui, Inf-Res.

1032 N. Dearborn Street

Chicago, Illinois

1. Receipt of your telegram of December 8, 1941, is acknowledged. Your tender of service is appreciated and has been made of record at this headquarters.

2. No change in the present War Department policy of ordering officers to active duty to fill existing vacancies has been made. When your name is reached on our priority list for active duty, you will be contacted by this headquarters. In the meantime, it is suggested that you hold yourself in readiness for an early call to active duty.

By command of Major General Benedict:

E. P. CURTIS

Major, A.G.D.

Asst. Adj. Gen.”

Defendant's Exhibit 13 which is a telegram dated December 11, 1941, addressed to 2nd Lt. M. Yasui, and signed E. P. Curtis, Asst. Adj. Gen., and which reads as follows:

“Western Union

CAV335 17 Collect—

Portland, Org 11 443P

2nd Lt M Yasui—

Inf Res 1032 North Dearborn St—

Reurtel effective date or details regarding your active duty not yet determined stop await further instructions—

E. P. CURTIS

Asst. Adj. Gen.”

Defendant's Exhibit 14 which is a letter dated March 28, 1942, addressed to 2nd Lt. Minoru Yasui, and signed W. R. Martin, and which reads as follows: [62]

“Headquarters Second Military Area

225 U. S. Court House

Portland, Oregon

hja/vjm.

March 28, 1942.

201-Yasui, Minoru,

2nd Lt., Inf-Res.

Subject: Status.

To: 2nd Lt. Minoru Yasui, Inf-Res.

704 12th Street,

Hood River, Ore.

The following War Department letter, file

and subject as above, dated March 19, 1942, forwarded by 1st indorsement, Hq. Ninth Corps Area, dated March 23, 1942, is quoted for your information and guidance:

1. Reference is made to your first wrapper indorsement of February 25, 1942, forwarding report of physical examination dated January 19, 1942, of Second Lieutenant Minoru Yasui, Infantry Reserve, (0-360897). The physical defect, defective vision, 8-200 right, is noted.

2. Waiver of the above noted defect is authorized for limited service under the provisions of letter, this office dated January 7, 1942, file AG 210.31 (12-19-41) RP-A, subject: "Waiving of physical defects for limited service officers of the supply arms and services."

3. Lieutenant Yasui will be retained in the Infantry Reserve with eligibility for limited service only.

By command of Major General Benedict:

W. R. MARTIN,
Captain, A.G.D.
Asst. Adj. Gen."

No Exhibits were received in evidence or offered at the trial other than as in this Bill of Exceptions set forth.

During the trial of the case and while the defendant was testifying as a witness in his own behalf the following proceedings were had:

Q. The record introduced by the Government shows that your birth was on October 19, 1916, at Hood River, Oregon. Does that conform with your information that that is the date of your birth? A. It does, sir. [63]

Mr. Bernard: I would like to have this marked for identification, please.

(Stipulation entitled in the above entitled cause, between Charles S. Burdell, of attorneys of the United States of America, and E. F. Bernard, Attorney for the Defendant, was thereupon marked for identification as Defendant's Exhibit 10.)

Mr. Burdell: Oh, I have no objection.

The Court: Admitted.

(Said stipulation, so offered and received, having previously been marked for identification, was thereupon marked received as Defendant's Exhibit 10.)

Mr. Bernard: I would like to say, your Honor, this is a stipulation entered into by the Government and myself whereby certain facts are admitted in the case.

The stipulation referred to was then read to the court and thereupon the following proceedings were had:

Mr. Burdell: May it be understood, your Honor, that that stipulation is only for the purpose of this case?

means. Either it is a fact or it isn't a fact. In other words, this Court refuses to try some moot question that is set up by the attorneys for the defense and the Government.

Mr. Burdell: All right, it may be stipulated as a fact, your Honor.

The Court: Stipulation received in evidence.

[64]

At the conclusion of all the evidence in the case and after both parties had rested, the defendant interposed a motion for a directed verdict and for a verdict and judgment of not guilty and the following proceedings were had:

Mr. Bernard: At this time, your Honor, the defendant wishes to interpose a motion for a mandatory verdict or judgment of not guilty

The Court: I don't know exactly what that in this case, on the ground, first, that the indictment fails to state a charge, inasmuch as it is alleged in the indictment that the defendant was born at Hood River, Oregon, in 1916, and there is a presumption from the fact of birth that citizenship follows.

Second, that the evidence is conclusive and without dispute that defendant since his birth, and particularly at the time alleged in the indictment that these acts were committed, had been and is a citizen of the United States, and as such these regulations are void as to him, for the reason that they deprive him of his

liberty and his property without due process of law.

The Court: * * * I would suggest that inasmuch as the question is pretty involved you had better include the other grounds of your motion, and that is that it deprives him of equal protection of the law. That is the other phase of it.

Mr. Bernard: * * * I will add to the motion that, in addition to the ground that the regulations violate the due process of law provisions of the Fifth Amendment, the regulation is discriminatory in that it applies to Japanese-American citizens, or citizens of Japanese ancestry, and to no other citizens, and does not apply [65] to citizens of Italian ancestry or citizens of German ancestry; and that the regulations is discriminatory and deprives the defendant of the equal protection of the laws which he is entitled to enjoy as an American citizen.

After argument of counsel the court took the motion of the defendant under consideration and thereafter, to-wit, on the 16th day of November, 1942, the court rendered its decision and found, as a matter of law, that the regulations which the defendant was charged with violating were void as to citizens of the United States of America and the court made a finding that the defendant was not a citizen of the United States and that the de-

fendant was a citizen of Japan, and the court denied the foregoing motion of the defendant and adjudged the defendant to be guilty.

The defendant duly saved an exception to the finding of the court that the defendant was not a citizen of the United States and was a citizen of Japan, and to the failure of the court to not hold that the defendant was a citizen of the United States, and the exceptions were allowed by the court. The defendant duly saved an exception to the order of the court denying the defendant's foregoing motion for a verdict and judgment and the exception was allowed by the court. The defendant objected and saved an exception to the imposing of any sentence against the defendant and the exception was allowed by the court.

It Is Hereby Certified that the foregoing proceedings were had upon the trial of this cause and that this Bill of Exceptions, which includes a transcript of all the testimony received upon the trial of this cause, which testimony is hereunto attached and marked Exhibit X, contains all the evidence offered or admitted, relative to, or necessary to, an understanding of the foregoing objections and exceptions, together with copies of all exhibits and evidence received or offered upon the trial of this cause and all proceedings had at the trial. [66]

It is further Certified that the foregoing exceptions in each case asked or taken by the defendant were allowed by the court and that this Bill of Exceptions has been presented, settled, and filed

within the time fixed by law and is, by me, duly allowed and signed this 5th day of January, 1943.

JAMES ALGER FEE

One of the Judges of the District Court of the United States for the District of Oregon. [67]

State of Oregon

County of Multnomah—ss.

Due service of the within Bill of Exceptions is hereby accepted in Multnomah County, Oregon, this 15 day of December, 1942, by receiving a copy thereof duly certified as such by E. F. Bernard, of Attorneys for the Defendant.

CARL C. DONAUGH,

Of Attorneys for Defendant.

[Endorsed]: Lodged in Clerk's Office Dec. 15, 1942. G. H. Marsh, Clerk. By R. D. W. Mott, Dep.

[Endorsed]: Filed Jan. 5, 1943. [68]

EXHIBIT X

In the District Court of the United States
for the District of Oregon

C-16056

UNITED STATES OF AMERICA,
Plaintiff,

vs.

MINORU YASUI,
Defendant.

TRANSCRIPT OF TESTIMONY
AND PROCEEDINGS

Portland, Oregon, Friday, June 12, 1942.
10:05 o'clock A.M.

Before: Honorable James Alger Fee, Judge.

Appearances:

Messrs. Carl C. Donough, United States Attorney, J. Mason Dillard, Assistant United States Attorney, and Charles S. Burdell, Special Assistant to the Attorney General, Attorneys for the United States of America, Plaintiff;

Mr. Earl F. Bernard, Attorney for Defendant.

Amicus Curiae:

Messrs. Green & Landye (By Mr. B. A. Green and Mr. Will Roberts);

Messrs. Dey Hampson & Nelson (By Messrs. R. R. Morris and Jack M. McLaughlin);

Exhibit X—(Continued)

Messrs. Hart, Spencer, McCulloch & Rockwood (By Messrs. Omar C. Spencer and Manley B. Strayer);

Messrs. Maguire, Shield, Morrison & Biggs [1*] (By Mr. Randall Kester);
Mr. Gus J. Solomon.

Cloyd D. Rauch, Court Reporter.

Proceedings:

The Court: United States of America, plaintiff,
versus Minoru Yasui, defendant.

Mr. Bernard: The defendant is ready for trial,
your Honor.

Mr. Donaugh: The Government is ready, your
Honor.

The Court: The reporter will note the presence
of the attorneys whom the Court has asked to ap-
pear as friends of the Court in this proceeding on
the constitutional questions. Gentlemen, will you
introduce yourselves for the purpose of putting
your names in the record?

Mr. Solomon: Gus J. Solomon.

Mr. Green: B. A. Green, and also appearing
here in court with me is Will Roberts, and it is
my intention, your Honor, not to remain during the
entire session, but Mr. Roberts will be here during
the entire session.

*Page numbering appearing at top of page of original Reporter's
Transcript.

Exhibit X—(Continued)

The Court: Yes.

Mr. Kester: Randall B. Kester, for the firm of Maguire, Shields, Morrison & Biggs.

Mr. Strayer: Manley Strayer and Omar C. Spencer, of the firm of Hart, Spencer, McCulloch & Rockwood. [2]

Mr. Morris: Jack McLaughlin and R. R. Morris, of the firm of Dey, Hampson & Nelson.

The Court: Thank you, gentlemen.

You may proceed.

Mr. Donagh: May it please your Honor, I take it from the manner in which this case has been called that the case will be tried by your Honor in the absence of a jury?

The Court: Yes, I understand the record has been made and I think there is a formal waiver of record. Or has there been?

Mr. Bernard: I doubt very much if there has been. My recollection is that it has not, but at this time we will stipulate and request that the case be tried by the Court without a jury.

The Court: And will the defendant make that request personally?

The Defendant: Yes, your Honor.

The Court: The defendant has requested that the case be tried by the Court without a jury, and the Court accedes to the request to try the case without a jury.

Mr. Donagh: Yes, your Honor. I may state briefly to your Honor that this case is a case orig-

Exhibit X—(Continued)

inating by reason of the formal indictment of the Grand Jury for Multnomah County charging the defendant Minoru Yasui with having failed to comply with what is known as Public Proclamation No. 3 issued by the Western Defense Command and Fourth Army, through Lieutenant General J. L. DeWitt, the Commanding Officer of the Western Defense Command and Fourth Army, and what is known as Public [3] Law No. 503, passed by the 77th Congress and approved on March 21, 1942, wherein the Government, by evidence to be presented before your Honor, charges that the defendant, a Japanese, by reason of being a person of Japanese ancestry coming within the purview of the proclamation issued by the Western Defense Command, was absent from his place of residence on and about March 28, 1942, by failing to comply with the orders of the Western Defense Command requiring that all persons of Japanese ancestry be at their places of residence from 8:00 o'clock P.M. up until and including 6:00 o'clock A.M. on the following day.

The facts in this case, as will be presented by witnesses before your Honor, are to the effect that he appeared here in Portland after the 8:00 o'clock hour and was taken into custody by the Portland Police Department, he walking into the Police Station, as I recall the facts, at or about 11:30 or 11:45 P.M., or thereabouts, and was taken into custody by the Portland Police Department under the

Exhibit X—(Continued)

proclamation of the military authorities issued in a military district and establishing the curfew hour.

That, in brief, your Honor, is the nature of the offense charged, and the evidence to be introduced here will be through the testimony of the police officers and the investigation of the case by the agents of the Government.

The Government is also prepared to introduce other testimony concerning the defendant, and if, as and when the opportunity presents under the rules of evidence has the [4] information as to certain beliefs which may be shared by persons of Japanese ancestry, should such evidence be pertinent to the case in hand.

The facts, however, are on the basis of absence from home between the hours of 8:00 o'clock P.M. and 6:00 o'clock A.M.

Mr. Bernard: If your Honor pleases, I know from the fact that your Honor has requested certain attorneys in Portland to appear in this case *amici curiae* that the case must have been considered a little by your Honor already, and for that reason I am not going to make an extended statement.

The evidence in this case will show that Mr. Yasui is an American citizen, and we will introduce evidence to show that that citizenship he has never been divested of, and that at the time of the alleged commission of the acts charged in this indictment he was an American citizen and entitled to all the

Exhibit X—(Continued)

privileges and immunities that attach to that status.

It will be our contention that this proclamation as applied to this defendant, and, indeed, the Executive Order of the President, if that Executive Order ever contemplated granting such power to the military commander, are void as a violation of the constitutional rights that attach to citizenship, and in that connection it will be our further contention that the war power of the Government of the United States does not diminish constitutional guaranties, particularly the guaranties attaching to citizenship under the fourth, fifth and sixth amendments [5] to the Constitution of the United States.

The Court: Proceed.

Mr. Donaugh: We will call Sergeant W. H. Mass.

WILLIAM H. MAAS

was thereupon produced as a witness in behalf of the United States of America, plaintiff herein, and was examined and testified as follows:

The Clerk: State your name, please.

A. William H. Maas.

The Clerk: Spell the last name.

A. (Spelling) M-a-a-s.

(The witness was thereupon duly sworn.)

Exhibit X—(Continued)
(Testimony of William H. Maas.)

Direct Examination

By Mr. Donaugh:

Q. Your name is W. H. Maas?

A. That is right.

Q. And you are a Sergeant with the Portland Police Department? A. Yes, sir.

Q. Were you a Sergeant of the Portland Police Department on and about May 28th and May 29th, 1942? A. That isn't the date.

Q. You say you were?

A. You haven't got the date right there. [6]

Q. I say, were you a Sergeant of the Portland Police Department? A. Yes, sir.

Q. On or about March 29th, or March 28th, 1942? A. Yes, sir.

Q. Did you at any time have occasion to see Minoru Yasui, the defendant in this case?

A. Yes, sir.

Q. And interview him, at that time?

A. Yes, sir.

Q. Whereabouts did you see him?

A. He came into the Police Station.

Q. On what date? A. March 28th.

Q. March 28th? A. At 11:20.

Q. At what time?

A. Eleven-twenty P.M.

Q. Eleven-twenty P.M.? A. Yes, sir.

Q. And what took place when he came into the Police Station?

Exhibit X—(Continued)

(Testimony of William H. Maas.)

A. Why, he came in there and he told me that he wanted to be arrested, he wanted to test the constitutionality of that alien curfew law. He said he had been down in the North End; he asked several policemen down there to arrest him, but they [7] wouldn't do it, and so he came into the Station.

Q. Did you have any further conversation with him?

A. Well, he told me that he was an American citizen, lived at Hood River, and that he wanted to test this case for the Japanese.

Q. Was that the substance and the total of your conversation with him at that time?

A. That was about all, yes.

Q. And he was placed under arrest, was he?

A. Yes, sir.

Q. Have you had occasion at any time to talk to him again? A. No.

Q. Were other officers present with you when he came into the Station, or were you just there alone at that time?

A. I was there alone.

Mr. Donaugh: That is all, Sergeant.

Mr. Bernard: No cross-examination.

(Witness excused.)

———....

Mr. Donaugh: We will call Mr. Quinn. [8]

Exhibit X—(Continued)

VINCENT M. QUINN

was thereupon produced as a witness in behalf of the United States of America, plaintiff herein, and was examined and testified as follows:

The Clerk: State your name, please.

A. Vincent M. Quinn.

(The witness was thereupon duly sworn.)

Direct Examination

By Mr. Donagh:

Q. Just state your name, Mr. Quinn, full name.

A. Vincent A. Quinn.

Q. And what is your business or occupation?

A. Special Agent of the Federal Bureau of Investigation, assigned to the Portland Field Office.

Q. And when were you assigned to the Portland Field Office, about when?

A. Around October 1st, 1941.

Q. And are you now so assigned?

A. I am.

Q. Have been since your assignment?

A. Yes, I have.

Q. Have you had occasion, in connection with your official duties, to talk with, interview or contact the defendant, Minoru Yasui?

A. Yes, I have.

Q. Will you state when you did that? [9]

A. On January 12, 1942 Mr. Yasui visited our office, at which time he advised that he was return-

Exhibit X—(Continued)

(Testimony of Vincent M. Quinn.)

ing from Chicago, Illinois, where he had been employed by the Japanese Consulate. He stated that he was doing general secretarial work for the Consulate and that he resided at Hood River, Oregon. At that time he exhibited to me a card verifying the fact that he was registered with the Department of State as an agent for a foreign principal. The card was dated June 21, 1941. Mr. Yasui told me that he resigned—or, rather, withdrew his registration as an agent for a foreign principal on December 8th. He also advised—rather, he exhibited to me a certified copy of birth certificate which he had in his possession which had been issued by the Oregon Department of Health. This certificate stated that Mr. Yasui was born in Hood River, Oregon on October 11, 1916. His father's name was stated to be Masuo Yasui. Mr. Yasui also advised me that he was a Second Lieutenant in the United States Army and that he expected to report for a physical examination around January 19, 1942, at which time he thought he would be inducted into the active forces of the United States.

That, in substance, was the conversation I had on January 12th, 1942.

On April 3rd, 1942 I visited at the Portland Police Department, after our office had been advised that Mr. Yasui had surrendered himself, wishing to test the constitutionality of the curfew regulations, and I verified the record of the [10] Port-

Exhibit X—(Continued)

(Testimony of Vincent M. Quinn.)

land Police Department, which set forth that on March 28, at approximately 11:50 P.M., Mr. Yasui appeared and surrendered himself, at which time he stated that he desired to test the constitutionality of the curfew regulations.

Q. In connection with your conversation and reference by the defendant to his parents, as you have previously testified, did he make any statement as to the nationality of his parents?

A. Yes, he did. He told me they were Japanese aliens. It was also disclosed on the certified copy of his birth certificate that both of the parents were born in Japan.

Q. Do you know how long the family or the parents of the defendant have lived at Hood River? Was that discussed at any time?

A. That was not discussed at the time, although Mr. Yasui told me that his father at that time was not at Hood River.

Q. Was any information given you concerning the subject's—or defendant's education, as to where he attended school in this country, or when?

A. Yes, he stated that he had graduated from the University of Oregon. I don't recall the dates or the year he graduated, although he probably did tell me. He stated that he had been admitted to practice before the local courts and that he was an attorney at law.

Exhibit X—(Continued)

(Testimony of Vincent M. Quinn.)

Q. Do you know how long he was employed by the Japanese Consul General in Chicago?

A. I believe he told me that he registered with the Secretary of [11] State at the time he commenced his employment, and the card was dated June 21, 1941, as I recall.

Q. Now, you mentioned that he withdrew from such employment on, did you say, December 9th?

A. December 8th.

Q. December 8th.

A. The day after the declaration of war with Japan.

Q. When you refer to December 8th, you mean December 8th of what year? A. 1941.

Q. You testified a moment ago in regard to the defendant holding a commission in the United States Army. Do you know how he acquired that commission, or when?

A. He advised me that he acquired the commission by taking a reserve officers' training course while attending the University of Oregon, R.O.T.C. course.

Q. And he still held that commission at the time you talked with him?

A. He stated that he did.

Q. And when did he see you?

A. January 12th of this year.

Q. January 12th of this year, 1942?

A. That is right.

Mr. Donaugh: That is all, Mr. Quinn. [12]

Exhibit X—(Continued)
(Testimony of Vincent M. Quinn.)

Cross Examination

By Mr. Bernard:

Q. Just a moment; I want to ask you a question or two, Mr. Quinn. Your first contact with this man was on January 12th, was it?

A. That is right.

Q. And did he come to your office voluntarily, or had you sent for him?

A. He came to the office voluntarily.

Q. And did he state what the purpose of his call was? A. He did.

Q. What was it?

A. He stated that he came to the office to inquire as to whether or not he could assist his father in any way. His father at the time was in Federal custody. He had been apprehended as an alien enemy.

Q. Well, you mean he had been taken into custody up at Hood River as an alien enemy?

A. That is right.

Q. You don't mean by "apprehended" that he had been in hiding any place, do you?

A. No, I don't.

Q. And then after discussing that matter how did you get onto the discussion of Mr. Minoru Yasui himself?

A. Minoru Yasui volunteered the information given to me. [13]

Exhibit X—(Continued)

(Testimony of Vincent M. Quinn.)

Q. And he told you that he had been employed in the Japanese Consul's office at Chicago?

A. That is right.

Q. Did he tell you in what capacity he had been employed?

A. He stated that he was doing general secretarial work and acting somewhat as a clerk.

Q. Do you know whether or not American people were likewise employed in that office?

A. I do not know that.

Q. You have made no investigation?

A. I have not.

Q. And did he voluntarily exhibit this card to you?

A. He did.

Q. And what was on that card?

A. It was a card issued by the United States Secretary of State, which set forth that he had registered on June 21, 1941, as an agent for a foreign principal.

Q. Do you know whether all employees in foreign consuls' offices have to be similarly registered?

A. I understand they are supposed to be registered.

Q. All employees?

A. That is right, if they are an agent for a foreign principal.

Mr. Bernard: Well, let's see,—will you hand this to the witness, please. And mark it, please.

Exhibit X—(Continued)

(Testimony of Vincent M. Quinn.)

(The card referred to, so produced, was thereupon [14] marked for identification as Defendant's Exhibit 1.)

Mr. Bernard: Q. Will you please examine Defendant's Exhibit 1 for identification and tell me if that is the card that the defendant exhibited to you on the occasion to which you have referred?

A. That is the card.

Mr. Bernard: We will offer the card in evidence, your Honor.

The Court: Admission is refused at the present time. You may introduce it in your case in chief.

Mr. Bernard: All right.

Q. Did he tell you when he had resigned this position in Chicago?

A. Yes, he did. He stated that he had notified the Secretary of State on December 8th, 1942. He stated that his father requested him to do so.

Q. Well, did he tell you that he had resigned his position on that date?

A. Yes, he did.

Q. And did you cause any check to be made at the office of the Secretary of State to find out if he had in fact notified the Secretary of State on that date that he had resigned his position?

A. No, I did not.

Q. Did he tell you that he had immediately on December 8th wired the military authorities offering his services in the [15] Army of the United States?

Exhibit X—(Continued)

(Testimony of Vincent M. Quinn.)

A. I don't recall that he told me that, although I do recall him stating that he expected to be called for a physical examination, to be inducted in the armed forces, around January 19th, the following week.

Mr. Bernard: I think that is all, Mr. Quinn.
(Witness excused.)

Mr. Donaugh: Call Mr. Mize.

RAY MIZE

was thereupon produced as a witness in behalf of the United States of America, plaintiff herein, and was examined and testified as follows:

The Clerk: State your name, please.

A. Ray Mize.

The Clerk: (Spelling) M-i-z-e?

A. Yes.

(The witness was thereupon duly sworn.)

Mr. Bernard: My attention has just been called to the fact, your Honor, that I think the last witness misspoke himself; he referred to December, 1942. I am assuming he meant 1941.

Mr. Donaugh: I had understood him to say 1941, but if there is any doubt about it I would like to recall him.

Exhibit X—(Continued)

(Testimony of Ray Mize.)

The Court: All right, recall him at this time. [16]

Mr. Donough: Yes, recall Mr. Quinn.

(Witness excused.)

VINCENT M. QUINN

was thereupon recalled as a witness in behalf of the United States of America, plaintiff herein, and was examined and testified further as follows:

Redirect Examination

By Mr. Donough:

Q. You testified, Mr. Quinn, in regard to a certain date, I believe, December 8.

A. That is right.

Q. What year did you refer to in that connection? A. 1941.

Mr. Bernard: That is all right.

Mr. Donough: Q. And you saw the defendant when?

A. I saw the defendant personally on January 12, 1942.

Mr. Donough: Yes. That is all.

Mr. Bernard: That is all, Mr. Quinn.

(Witness excused.) [17]

Exhibit X—(Continued)

RAY MIZE

thereupon resumed the stand as a witness in behalf of the United States of America, plaintiff herein, and, having previously been duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Donaugh:

Q. Will you state your name, please.

A. Ray Mize.

Q. And what is your business or profession, Mr. Mize?

A. Special Agent of the Federal Bureau of Investigation, Portland Field Division.

Q. And how long have you been assigned to the Portland Field Division?

A. Approximately three months.

Q. And you have been assigned to this Division since three months ago, continuously since three months ago?

A. I have, sir.

Q. Have you had occasion to make an investigation or to interview or contact the defendant, Minoru Yasui?

A. I had occasion to interview the defendant.

Q. When was that, Mr. Mize?

A. On March 30, 1942.

Q. And at what place and where?

A. In the office of the Federal Bureau of Investigation.

Q. Here in Portland? [18]

Exhibit X—(Continued)

(Testimony of Ray Mize.)

A. Yes, sir.

Q. Will you state the occasion for talking to him at that time?

A. Yes; at my request, Mr. Yasui called at the office for the purpose of being questioned as to violation of the curfew regulation. He voluntarily appeared and I discussed the same with him for approximately an hour on the evening of that date.

Q. Just what was the nature of your interview with him? What was said?

A. Mr. Yasui discussed with me a little bit of his background history, which indicated that he had attempted—had lived in Hood River, Oregon, had attended high school there, and had also attended the University of Oregon, where he had graduated from the Law School in 1939. Subsequent to that time he had practiced law for a brief period in Hood River and in Portland, after which time and during the first part of 1940 he had accepted a position, secretarial or clerical, with the Japanese Consulate in Chicago, Illinois.

Q. You say he started to work there when?

A. The first part of 1940. I don't recall the exact month, although he gave it to me. And he stated that he had resigned that position at the time the Pearl Harbor incident occurred. I asked him the reasons for his resignation at that time, and he indicated that he did not feel that he could be a loyal American citizen and at the same time be

Exhibit X—(Continued)

(Testimony of Ray Mize.)

employed as an agent for the Japanese government. He advised, also, that he held [19] a commission in the Reserve Officers Training Corps, which he had received on his graduation from the University of Oregon in Eugene. I discussed with him the violation of the curfew regulation, and he stated that he had given himself up voluntarily at the local Police Department here for the purpose of testing the constitutionality of the regulation itself. I asked him the reason for doing that, and he stated that he was an American citizen of Japanese descent and that he felt that a regulation such as the one that was being imposed was unconstitutional, in that it was a discrimination against one group of United States citizens and the same regulation did not apply to all citizens, and he felt that the large majority of the Japanese citizens in this country were loyal to this country and wanted to do their part in the present war and that they could not do their part in the present war under the restriction which was being discussed at that time. I discussed with him briefly the war itself and asked him whether he felt that the Japanese government had acted fair and square in the present war, and he said frankly that he did not think that the Japanese government had, and as a result American citizens of Japanese descent in this country were being called upon to be unjustly discriminated against and suffer for the crimes of another, and under the

Exhibit X—(Continued)

(Testimony of Ray Mize.)

United States Constitution no person should suffer for the crimes of another one, indicating that the Japanese government had been the criminal and American citizens of Japanese descent [20] in this country were being subjected to unjust treatment as a result of that. I asked him if he felt that during these particular times his action would reflect very favorably on the Japanese colony, and Mr. Yasui stated that when thinking it over he did not think that it would be a very good reflection and that he in a certain sense was sorry that he had taken the action that he had.

Q. That was the substance of your interview with him at that time?

A. That is the substance of the interview, Mr. Donagh, at that time.

Q. Did you have occasion to see him at any later period at all? A. I did not.

Q. You were not present when he called at the office of the FBI at some previous time?

A. I was not assigned to this office at that time and was not present.

Mr. Donagh: May it please your Honor, at this time I should like to submit this document to be marked as Government's Exhibit Number 2 for identification.

(Certified copy of Foreign Official Status Notification, so produced, was thereupon marked for identification as Government's Exhibit 2.)

Exhibit X—(Continued)

(Testimony of Ray Mize.)

The Court: The witness suggests, Mr. Donaugh, that he did not complete his answer, apparently that he had forgotten something.

Mr. Donaugh: Oh, I see. [21]

A. In addition, with the Court's permission and counsel's permission, I have another point that I would like to bring up. I asked Mr. Yasui what he would do if he was in charge, in command of the West Coast here, and an invasion of this country was very probable, and I asked him what he would do to be very sure that the internal security of this country would be absolutely protected, and Mr. Yasui said, "Well, that is a rather hard question at this time", but after due hesitation he finally stated that "I feel I would intern all Japanese aliens and Japanese citizens." That is all.

Mr. Bernard: I have no objection to the document.

The Court: Admitted.

Mr. Donaugh: I should like to offer this in evidence, your Honor.

(The document referred to, having previously been marked for identification, was thereupon marked received as Government's Exhibit 2.)

Mr. Donaugh: May it please your Honor, reading from Government's Exhibit Number 2, a certificate from the Secretary of State, Washington, D. C., dated June 17, 1941, shows that the defend-

Exhibit X—(Continued)

(Testimony of Ray Mize.)

ant Minoru Yasui registered as an employee of the Consulate General of Japan at Chicago, Illinois, in the capacity of secretary.

“Date of assumption of present duties, April 1, 1940.”

Performance—or, rather, the defendant’s present and [22] proposed activities, including place or places of performance: “Secretarial work, and research; to be performed for the Consulate General of Japan, at Chicago, Illinois.”

“Nature and place or places of occupation or employment during the last five years” is set forth as “September, 1933 to June, 1939, student, at University of Oregon, Eugene, Oregon. June, 1939 to November, 1939, ranch hand, Hood River, Oregon. November, 1939 to April, 1940, practice of law, Portland, Oregon. April, 1940 to present date, secretary, Consulate General of Japan, Chicago, Ill.”

Bearing the defendant’s signature and photograph.

At this time, your Honor, I should like to ask that these four documents be marked for identification in the order in which I am handing them to the bailiff.

(The documents referred to, so produced, were thereupon marked as follows:

Certified copy of letter, bearing date March 2, 1942, Henry L. Stimson, Secretary of War, to Lieutenant General John L. DeWitt, Com-

Exhibit X—(Continued)

(Testimony of Ray Mize.)

mander, Western Defense Command, was marked for identification as Government's Exhibit 3;

Certified copy of Public Proclamation No. 1, Headquarters, Western Defense Command and Fourth Army, bearing date March 2, 1942, was marked for identification as Government's Exhibit 4; [23]

Certified copy of Public Proclamation No. 3, Headquarters, Western Defense Command and Fourth Army, bearing date March 24, 1942, was marked for identification as Government's Exhibit 5;

Certified copy of Public Proclamation No. 5, Headquarters, Western Defense Command and Fourth Army, bearing date March 30, 1942, was marked for identification as Government's Exhibit 6.)

Mr. Donaugh: I should like to display these to counsel, please.

The Court: Yes.

Mr. Bernard: No objection.

Mr. Donaugh: At this time, your Honor, I desire to offer in evidence Government's Exhibits 3, 4, 5 and 6.

The Court: Any objection?

Mr. Bernard: No objection.

The Court: They are admitted.

Mr. Donaugh: These documents being certified

Exhibit X—(Continued)

(Testimony of Ray Mize.)

copies of the authority of General J. L. DeWitt and Public Proclamations 1, 3 and 5 issued by Lieutenant General J. L. DeWitt, United States Army, Commanding The Western Defense Command and Fourth Army.

(The documents referred to, so offered and received, having previously been marked for identification, were thereupon marked received as Government's Exhibits 3, 4, 5 and 6.) [24]

Mr. Donagh: You may cross-examine.

The Court: Reading is waived, I take it?

Mr. Bernard: Yes, we will waive the reading of them at this time, your Honor.

Cross Examination

By Mr. Bernard:

Q. There was just one statement, Mr. Mize, I didn't get quite clearly and I would like to check with you. Did I understand you to say that he told you that the reason that he had resigned was that he felt that he then could not be a loyal American and keep his employment in the Consul General's office?

A. He implied as much, Mr. Bernard.

Mr. Bernard: That is all.

Mr. Donagh: That is all, Mr. Mize.

Mr. Bernard: Oh, wait, there is one question: Did you ever get any message, left on your desk or otherwise, that Mr. Yasui had called to see you again and you were not in?

Exhibit X—(Continued)

(Testimony of Ray Mize.)

A. Not that I recall, Mr. Bernard.

Mr. Bernard: That is all.

(Witness excused.)

Mr. Donaugh: Call Mr. Wagner. [25]

DEWART E. WAGNER

was thereupon produced as a witness in behalf of the United States of America, plaintiff herein, and was examined and testified as follows:

The Clerk: State your name, please.

A. Dewart E. Wagner.

(The witness was thereupon duly sworn.)

Direct Examination

By Mr. Donaugh:

Q. Now, Mr. Wagner, if you will state your name for the record, please.

A. I believe he has it: Dewart E. Wagner.

Q. And what is your business or occupation, Mr. Wagner?

A. I am Director of Vital Statistics for the State of Oregon.

Q. And for what department?

A. Vital Statistics, in the State Board of Health.

Q. State Board of Health; and where are your headquarters?

Exhibit X—(Continued)

(Testimony of Dewart E. Wagner.)

A. Fifth and Oak, Oregon Building.

Q. And what do you mean by the Department of Vital Statistics?

A. We receive and file all birth and death certificates for the State of Oregon.

Q. That includes Hood River County, Oregon?

A. Yes.

Q. How long have you been so employed?

A. Six years. [26]

Q. And continuously for the past six years?

A. Except for one year when I had leave of absence.

Q. And in connection with your official duties do you have the custody of the birth records in the state of Oregon as possessed by your department at this time? A. I do.

Q. What records, if any, do you have concerning the defendant, Minoru Yasui?

A. I have a record here, which I was requested to look up, which is a birth certificate of a child named Minoru Yasui, born October 19, 1916, in Hood River.

Q. Any other information shown on the certificate as to parentage, race, any information pertaining as to who the individual is?

A. Parentage, Masuo Yasui and Shidzu Miyake; residence, Hood River, Oregon; race of father, Japanese, aged 29; race of mother, Japanese, aged

Exhibit X—(Continued)

(Testimony of Dewart E. Wagner.)

27. Birthplace of father, Japan; birthplace of mother, Japan. Occupation of father, merchant. This certificate was filed at the time of birth.

Q. That is an official State record of your office, is that right? A. Yes.

Q. Is the page detachable, Mr. Wagner?

A. Not, it is not. The handwriting on the bottom is that of—

Q. (Interrupting) I mean is the page detachable from your book?

A. It is not. It was bound in 1916. [27]

Mr. Donaugh: At this time, your Honor, I should like to have the document from which the witness has testified marked for identification.

Mr. Bernard: No objection.

Mr. Donaugh: Q. Pardon me, Mr. Wagner, do you have a certified copy of this document with you?

A. I do not. I could procure one.

Mr. Bernard: Mr. Burdell spoke to me about this the other day. I told him that I had a certified copy of the birth record, which I hold in my hand, which I would make available to him if he wanted it. I have also made a copy of that in our office, which has been checked very carefully, and if this certified copy of ours is used I would like to have the copy substituted in its place, as the Japanese find it necessary to have these birth certificates in their possession.

Exhibit X—(Continued)

(Testimony of Dewart E. Wagner.)

Mr. Donagh: The Government is not doubting the authenticity of the copy, and yet I believe that if later this document is to be replaced it could be replaced by a certified copy. I was going to suggest to your Honor when this has been examined and I move for its admission it is with the proviso that it may later be released and a certified copy substituted for the record.

The Court: Mark it for identification.

(Certificate of Birth of Minoru Yasui, registered No. 159, Oregon State Board of Health, Division of Vital Statistics, page numbered 154, so pro- [28] duced, was thereupon marked for identification as Government's Exhibit 7.)

Mr. Bernard: No objection.

Mr. Donagh: At this time I desire to offer the exhibit in evidence.

The Court: It may be received without objection.

(The document referred to, so offered and received, having previously been marked for identification, was thereupon marked received as Government's Exhibit 7.)

Mr. Donagh: May we at a later time, your Honor, substitute a certified copy for the exhibit so received?

The Court: The Court at a later period will receive favorably a motion to remove this original

Exhibit X—(Continued)

(Testimony of Dewart E. Wagner.)

from the files and substitute a photostatic copy of both sides of the document, if there is no objection.

Mr. Bernard: No objection, your Honor.

The Witness: May I ask a question, your Honor?

The Court: Yes.

A. I could have that back, however, can I not?

The Court: What?

A. I can take the book back with me? We will be seriously crippled in our office without it.

The Court: Well, I am sorry, but you can't. Proceed.

Mr. Donaugh: That is all, Mr. Wagner. [29]

Cross-Examination

By Mr. Bernard:

Q. I think you read all of that document except one entry. It lists the occupation of the mother as housewife. A. I don't recall.

Q. That is all right; it is in evidence. Will you hand it to the witness and let him — because everything else has been read into the record, and that was my recollection. You read the occupation of the father from the certificate. What is the occupation of the mother? A. Housewife.

Mr. Bernard: That is all.

Mr. Donaugh: That is all, Mr. Wagner.

The Witness: Your Honor, we need this book badly, and in my official capacity could I detach

Exhibit X—(Continued)

(Testimony of Dewart E. Wagner.)

that page, to be replaced later? Many deserving people will be out of work, and there are boys in this book who are joining the Army and Navy that have to have their birth certificates immediately, and if we don't have this book—on my authority can I take out the page, to be replaced later, and take the book back?

The Court: As far as this Court is concerned, it is introduced in evidence. If you want to make arrangement with the United States Attorney it is all right, but as far as the Court is concerned the book is in evidence and must remain there. Talk to the United States Attorney, if you wish.

(Witness excused.) [30]

Mr. Donaugh: This case has progressed a little more rapidly than the Government had anticipated, your Honor. We had one witness whom we desired to present who is not here, but I think he may be replaced by another witness, if I could have a little time.

The Court: It is now eleven o'clock. The Court will be in recess.

(A short recess was thereupon had, after which proceedings were resumed as follows:)

Mr. Donaugh: May it please your Honor, two witnesses for the Government who in our opinion have material testimony are not at the moment available. One man is on his way here to Portland who lives out of the city and will be here at 1:30.

Exhibit X—(Continued)

One witness is a resident of Portland, and I have requested him to immediately come to the Court House, but it will be a few minutes before he can come here. At this time, if the Court is agreeable, we should like to have sufficient time for these witnesses to come here and be available in this case. The Government takes the responsibility for the man who is not here. I had rather anticipated that we would not get to him before 1:30 and I told him this morning by telephone that if he was here by 1:30 I thought that would be sufficient, but I find that we are in error as to this particular man.

The Court: Any objection on the part of the defense?

Mr. Bernard: No, your Honor. [31]

The Court: The Court will adjourn these proceedings until two o'clock this afternoon.

Mr. Bernard: I might state to your Honor that I have prepared a memorandum in this case and I intended to hand it up to your Honor when the case started, but I will do that now.

The Court: Have you served a copy on the Government?

Mr. Bernard: Yes, I will give them a copy now.

The Court: Have you been served with the Government's brief, Mr. Bernard?

Mr. Bernard: Yes, I got a copy of it this morning, your Honor.

Exhibit X—(Continued)

The Court: Court is in recess until two o'clock.

(At 11:25 o'clock A. M., Friday, June 12, 1942, a recess was had until 2:00 P. M.) [32]

Afternoon Session

2:05 P. M.

Mr. Donough: Call Mr. Davis.

ALAN DAVIS

was thereupon produced as a witness in behalf of the United States of America, plaintiff herein, and was examined and testified as follows:

The Clerk: State your full name, please.

A. Alan Davis.

(The witness was thereupon duly sworn.)

Direct Examination

By Mr. Donough:

Q. State your name, Mr. Davis.

A. Alan Davis.

Q. And you are engaged in what business or occupation?

A. Special Agent, Federal Bureau of Investigation.

Q. And were you a Special Agent of the Federal Bureau of Investigation in March, 1942?

A. I was.

Exhibit X—(Continued)

(Testimony of Alan Davis.)

Q. And where were you stationed during that time? A. The Portland office.

Q. Did you have occasion to talk to the defendant, Minoru Yasui? A. Yes, sir.

Q. Will you state when and where you talked to him?

A. It was in the late afternoon of March 30th, 1942, in the [33] Portland office, Portland Field Division.

Q. And by that you mean the Federal Bureau of Investigation? A. Yes, sir.

Q. Anyone present besides yourself?

A. Yes; Special Agent Mize, of the FBI.

Q. Will you state the nature of the conversation you had with the defendant at that time.

A. Mr. Mize had been discussing affairs with Mr. Yasui at the time I entered the room, and I had previously known Mr. Yasui at the University of Oregon and I started talking with him, regular conversation. Mr. Mize was asking certain questions, and we were discussing the patriotism of the Japanese, and, as I recall, the question was asked Mr. Yasui by Mr. Mize as to the loyalty of the Japanese in Oregon, whether he could depend upon them or say that he could depend upon them in case there might be an attempted invasion in this country, whether he, who might be in charge of the affairs in this country, would detain all the Japanese, including the aliens as well as the American-

Exhibit X—(Continued)

(Testimony of Alan Davis.)

born Japanese citizens. Mr. Yasui at that time more or less hesitated in answering the question, but he stated quite definitely that he would intern not only the aliens but also the American-born Japanese in that case. We discussed various other things. Most of them were mostly our school days and things that had no interest in this matter.

Q. You had known the defendant previously, had you? [34]

A. Yes, sir.

Q. At the University of Oregon?

A. Law School and prior to our entrance in Law School, yes, sir.

Q. Now, the circumstances under which Mr. Yasui talked with you and with Mr. Mize were what? Where were you and what were the surrounding circumstances and conditions under which he talked and discussed this matter with you?

A. Well, as I can recall, Mr. Yasui had been in the office previously and we had discussed various things. He had been arrested by the Portland Police Department for violation of the curfew and he was at the office, I believe, to see Special Agent Quinn and I had merely talked and said "Hello" to him at that time, and it was on March 30th that he was up talking with Mr. Mize in the afternoon and I walked into the office and started in talking with him at that time. I was not trying to solicit any information from him regarding Japanese activities or his own activity, merely

Exhibit X—(Continued)

(Testimony of Alan Davis.)

sitting in more or less in the interview that Mr. Mize was conducting.

Q. Was there any discussion at all as to what consideration he would receive by you should he testify or speak to you about this matter?

A. No, sir.

Q. No threats or——

A. (Interrupting) No, sir.

Q. (Continuing) ——duress of any kind? [35]

A. No, sir.

Q. Promises? A. None.

Q. He seemed to be, other than the matter of hesitation you speak of, he seemed to be talking freely and with ease to you? A. Yes, sir.

Q. Was that the only occasion that you discussed this case with him?

A. We had talked prior to that, I think a week or so before that. I had made no notes on it and I cannot recall the discussion, although we did discuss that it was the Japanese that were at war and we talked of that, and we talked of his employment with the Japanese Consul in Chicago. We told him—I was more or less curious at the time whether agents had contacted him while he was at Chicago, and we discussed that matter.

Mr. Donagh: I think that is all.

Cross Examination

By Mr. Bernard:

Q. Now, as I understand it, Mr. Davis, you came

Exhibit X—(Continued)

(Testimony of Alan Davis.)

in on March 30th when Mr. Yasui had already been engaging in a conversation with Mr. Mize?

A. Yes, sir.

Q. And something came up about locking up the Japanese to prevent sabotage?

A. I did not mention sabotage, no, sir. [36]

Q. Locking them up for what purpose?

A. Well, for protection of this country.

Q. Well, in what way?

A. Well, I would assume that he meant that he would be unable to trust the Japanese on the West Coast.

Q. Pardon me, I am asking you what he said about that. I want to know what he said about that.

A. Well, he stated that if he had anything to do with it and there might be an attempted invasion of this country he would detain aliens as well as the citizens.

Q. And how did he come to say that, do you remember? What brought that up?

A. The question was asked by Mr. Mize, as I recall, that if he should be in charge of military affairs in this country, or on the West Coast, what he might do under those circumstances.

Q. Now, let me refresh your recollection. Isn't this about what happened, that somebody was pressing the subject as to how the commander of the army would be absolutely sure of the protection of the country without locking up the Japanese, and

Exhibit X—(Continued)

(Testimony of Alan Davis.)

Mr. Yasui said, "Well, if you wanted to be absolutely sure I suppose they would be locked up", and that somebody remarked, "To the same extent that if God wanted to be absolutely sure that there wouldn't be any wars fought, why, we should kill off all the human beings." Now, does that refresh your recollection any? A. No, sir. [37]

Mr. Bernard: I see. That is all.

Mr. Donaugh: That is all, Mr. Davis.

(Witness excused.)

Mr. Donaugh: At this time we call Dr. Everson. [38]

W. G. EVERSON

was thereupon produced as a witness in behalf of the United States of America, plaintiff herein, and was examined and testified as follows:

The Clerk: State your name, please.

A. W. G. Everson.

(The witness was thereupon duly sworn.)

Direct Examination

By Mr. Donaugh:

Q. Now, Dr. Everson, your full name is William G. Everson? A. William G. Everson.

Q. And what is your profession, Doctor?

A. President, Linfield College.

Exhibit X—(Continued)

(Testimony of W. G. Everson.)

Q. At McMinnville, Oregon?

A. At McMinnville, Oregon.

Q. And prior to that you were located where?

A. As pastor of the First Baptist Church, the White Temple, Portland, Oregon.

Q. I believe you have had military experience, Doctor? A. Yes, sir.

Q. At one time you held a commission in the United States Army? A. Yes, sir.

Q. What was the highest rank you achieved in the United States Army?

A. As a Major General, Chief of the National Guard Bureau.

Q. And during what period were you the Chief of the National [39] Guard Bureau?

A. About '29-'31.

Q. Do you occupy any official position in connection with the war activities at the present time?

A. Chairman, Enemy Alien Hearing Board.

Q. And for what locality or district?

A. District of Oregon.

Q. And you were appointed by whom?

A. By the United States Attorney, Mr. Biddle.

Q. United States Attorney General?

A. United States Attorney General, Mr. Biddle.

Q. Now, in connection with your duties as Chairman of the Alien Enemy Hearing Board for Oregon, have you or the other members of the Board

Exhibit X—(Continued)

(Testimony of W. G. Everson.)

in association with you at any time contacted or interviewed the defendant, Minoru Yasui?

A. Yes, we had some contacts with him during his hearing in February, February 3rd, at Missoula, Montana, and this was in connection with a hearing conducted in behalf of his father; this young man appeared in behalf of his father.

Q. And this hearing was held where?

A. At Missoula, Montana, Fort Missoula.

Q. Fort Missoula, Montana? A. Yes, sir.

Q. And the father of the defendant was confined at Fort Missoula at that time? [40]

A. Yes, sir.

Q. Do you know his nationality?

A. Japanese.

Q. Japanese; and did the father appear before the Alien Enemy Hearing Board and yourself?

A. Yes, sir.

Q. And in what capacity was the defendant there? Why was he there?

A. The regulations permit a friend or a relative to appear, and the son appeared as a relative to testify in behalf of his father.

Q. Did he in so testifying discuss himself and his own activities?

A. Yes. He informed us that he was a Second Lieutenant in the United States Reserve and was to be ordered to active duty inside of two weeks, and when he made that statement I asked him if he

Exhibit X—(Continued)

(Testimony of W. G. Everson.)

had received orders for his physical examination. He said, "No", and I asked that question because I felt that anyone being ordered up for active duty inside of two weeks would certainly have orders for physical examination; and I asked him why he knew he was to be ordered up inside of two weeks, and he said that was the normal procedure.

Mr. Bernard: I didn't get the last part of that answer.

A. When I asked him why he knew that he was to be ordered up for active duty inside of two weeks he said, "That is the normal procedure." [41]

Mr. Donaugh: Q. Was anything said in your presence, Doctor, concerning the employment of the defendant and where he had been employed prior to his appearance before your Board?

A. Yes; he was employed in connection with the Consul General's office in Chicago up to the——

Q. (Interrupting) What Consul General's office?

A. The Japanese Consul General's office in Chicago,—up to December 7th, when he stated he had resigned.

Q. Do you recall if anything was said concerning how he happened to be employed by the Japanese Consul General in Chicago?

A. Yes; he said that the information was that the Japanese Consul General appointed by the authorities in Japan was to arrive in San Francisco,

Exhibit X—(Continued)

(Testimony of W. G. Everson.)

and his father sent a letter of recommendation which secured for him the appointment as a secretary, and then afterwards this developed into a public relations assignment.

Q. Do you recall if anything was said as to the period of time during which he applied for a secretary's job? In other words, the ease or the difficulty with which he secured his position with the Japanese Consul General?

A. There seemed to be no difficulty at all and all that was necessary was the writing of a letter and the appointment came through immediately.

Q. And by the writing of the letter you mean the letter of the father to which you testified?

A. The letter of the father to this Japanese Consul General. [42]

Q. Now, when this statement was made was the father present? A. Yes.

Q. And heard the defendant make the statement to which you are now testifying? A. Yes.

Q. Now, I believe you stated that he first was employed as a secretary? A. Yes, sir.

Q. And then later in what capacity?

A. As public relations man in behalf of the Consul General.

Q. Did he explain what he meant by "public relations man"?

A. Yes; he said he wrote a good many letters and made speeches, and these speeches were in behalf

Exhibit X—(Continued)

(Testimony of W. G. Everson.)

of the Japanese program in opposition to the Chinese; and he also stated that these speeches were usually looked over by the Japanese Consul General.

Q. And by that statement, Doctor, when you state that the Japanese Consul General looked over these speeches, do you mean by that—when do you mean he looked over these speeches?

A. Prior to the delivery.

Q. How many of these speeches were delivered?

A. I do not know.

Q. Well, do you recall whether there was any statement made as to whether one speech was delivered or more than one?

A. Yes, he said that he delivered several speeches, and I recall he referred, as one illustrative, to Kankakee. [43]

Q. Do you know how the invitations were received which caused the defendant to go out and deliver these speeches on behalf of the Japanese Consul General?

A. No, I do not.

Q. Was anything said concerning the commission of the defendant in the United States Army during this time of employment by the Japanese Consul General and the delivery of these speeches, in behalf of the defendant? (Sic)

A. He held his commission during this period, commissioned on graduation because he was con-

Exhibit X—(Continued)

(Testimony of W. G. Everson.)

connected with the R. O. T. C. at a state institution, the University.

Mr. Donough: I believe that is all, Doctor.

Cross Examination

By Mr. Bernard:

Q. Doctor, I didn't get exactly that part of your testimony where you mentioned the name "Kankakee". What was there about that? I didn't follow you there.

A. I understood that the statement was made that he gave speeches in various civic groups through organizations in towns around Chicago, and there may have been several towns mentioned but the only one that lingers in my mind was Kankakee. Now, why that should linger I don't know, but that was brought up in connection with the statement.

Q. Dr. Everson, just one thing in regard to your testimony: Do you recall him saying up there that in order to get this position [44] in Chicago that he also got letter of recommendations from Wayne L. Morse, Dean of the University of Oregon Law School?

A. No, I do not.

Q. You don't recall that? A. No, sir.

Q. He might have said that?

A. I do not recall.

Q. You do not recall, but it might have slipped your memory? A. I do not recall it.

Exhibit X—(Continued)

(Testimony of W. G. Everson.)

Mr. Bernard: I see. That is all.

Mr. Donough: That is all, Doctor.

(Witness excused.)

Mr. Donough: Call Mr. Scott. [45]

LESLIE M. SCOTT

was thereupon produced as a witness in behalf of the United States of America, plaintiff herein, and was examined and testified as follows:

The Clerk: State your name, please.

A. Leslie M. Scott.

(The witness was thereupon duly sworn.)

Direct Examination

By Mr. Donough:

Q. Your name is Leslie M. Scott?

A. That is correct.

Q. And I believe, Mr. Scott, that you are the State Treasurer of Oregon? A. I am.

Q. Have you had any connection, Mr. Scott, with the alien enemy situation in Oregon?

A. A member of the Board for this state.

Q. Of the Alien Enemy Hearing Board?

A. Yes.

Q. And in connection with your duties as a member of the Alien Enemy Hearing Board have you before today seen the defendant or have you

Exhibit X—(Continued)

(Testimony of Leslie M. Scott.)

talked with him or he talked in your presence at any time?

A. At Fort Missoula, on February 3rd, at a hearing of the Board, Mr. Yasui testified in behalf of his father. [46]

Q. And that was where?

A. At Fort Missoula, Montana.

Q. Do you recall, Mr. Scott, what the defendant on that occasion said with respect to his own activities and employment? Did he state to the Board anything concerning himself?

A. He did. In response to inquiries of members of the Board he stated that he had been in the service of the Japanese Consul General at Chicago as secretary to the Consul General and as a public relations agent or representative.

Q. Was anything said in regard to his duties as public relations representative?

A. He was to attend to the correspondence of the Consul General, he, Mr. Yasui, having ready command of English, and he was to make speeches on subjects approved by the Consul General. The subject matter of these speeches was approved by the Consul General.

Q. Was anything said as to how many speeches were delivered or how active the defendant was in that connection?

A. I don't know how numerous they were. I gained the impression that they were rendered on

Exhibit X—(Continued)

(Testimony of Leslie M. Scott.)

a number of occasions before groups of American citizens.

Q. Did he say what the subjects of these talks were?

A. They pertained to the conduct of the Japanese war against the Chinese, justification of Japanese policy toward China, in justification of the war against China. [47]

Q. Was there any discussion had before your Board concerning the delivery of these speeches by the subject, or, rather, the defendant, as an employee of the Japanese Consul General's office and also as an officer in the United States Army?

A. The method of his gaining this employment was narrated by Mr. Yasui in response to questions of members of our Board. He said that he had graduated a short time before from the University of Oregon Law School, and his father was desirous of making a connection for him with the Japanese Consul General. His father had heard that the Japanese Consul General was soon to land in San Francisco, coming from Japan. The father, Mr. Yasui, wrote a letter—this was brought out in the testimony given by Mr. Yasui, Junior,—the father wrote a letter to the Consul General at San Francisco describing the qualifications of the young man and furnishing a number of recommendations. What the recommendations were or from whom, I

Exhibit X—(Continued)

(Testimony of Leslie M. Scott.)

don't believe they were mentioned at the time of this hearing, or how many such letters there were.

Q. I take it, then, from your testimony that his employment with the Japanese Consul General was on the basis of the recommendation of his father, is that correct?

A. That was the distinct impression that the Board received.

Q. And the father was also before your Board?

A. The father was before our Board at the time and the son appeared as friend or relative or advisor of his father.

Q. And the hearing that you conducted and the purpose of your [48] Board being in Fort Missoula concerned the father, do I understand?

A. It concerned the father and not the son.

Q. And what was the nationality of the father?

A. The father is a native-born Japanese. The son, it was brought out before the Board, was born in the United States; he was 25 years of age last February; at least, that was the testimony of himself. The father came to the—well, the father had given the son the advantages of an American education.

The Court: I take it, Mr. Donaugh, that these are things that were said by the defendant? I am not reviewing the testimony that may have happened or come in before the Board in Missoula which was not given by the defendant.

Mr. Donaugh: Q. As I understand your testi-

Exhibit X—(Continued)

(Testimony of Leslie M. Scott.)

mony, Mr. Scott, your testimony here is based on the testimony of the defendant before you at the time he appeared as a witness; is that correct?

A. That is correct.

Mr. Donaugh: I believe that is all at this time.

Mr. Bernard: That is all. No cross-examination.

(Witness excused.)

Mr. Donaugh: May it please your Honor, with the permission of the Court, may I at this time specifically, and for the purpose of the record, quote from the Government's Exhibits 3, 4, 5 and 6, as to the nature of the exhibits and what they imply.

Government's Exhibit Number 3 is a certified copy, [49] dated March 2, 1942, in the form of a letter directed by Henry L. Stimson, Secretary of War, to Lieutenant General John L. DeWitt, Commander, Western Defense Command, San Francisco, California. It states, in part, in paragraph one:

"By letter dated January 20, 1942, I designated you as one of the appropriate Military Commanders to exercise the powers vested in me under Executive Order No. 9066, February 19, 1942, and I delegated to you such powers as are necessary to carry out the purposes of that Executive Order."

Secretary Stimson follows with this line: "Incident to the exercise of those powers, you are authorized to employ without regard to Civil Service

Exhibit X—(Continued)

or Classification laws or regulations, all persons or agencies necessary to carry out your duties.”

The balance of paragraph one and paragraphs two and three have certain instructions and directions to General DeWitt with respect to the manner in which he may employ personnel to carry this order into execution.

Government’s Exhibit Number 4 is what is known as Public Proclamation No. 1, certified as an official copy, issued from the Headquarters, Western Defense Command and Fourth Army, The Presidio of San Francisco, California, under the signature of J. L. DeWitt, Lieutenant General, United States Army, Commanding, dated March 2, 1942, which recites:

“Whereas, By virtue of orders issued by the War [50] Department on December 11, 1941, that portion of the United States lying within the States of Washington, Oregon, California, Montana, Idaho, Nevada, Utah and Arizona and the Territory of Alaska has been established as the Western Defense Command and designated as a Theater of Operations under my command; and

“Whereas, By Executive Order No. 9066, dated February 19, 1942, the President of the United States authorized and directed the Secretary of War and the Military Commanders whom he may from time to time designate, whenever he or any such designated commander deems such action necessary or desirable, to prescribe military areas in

Exhibit X—(Continued)

such places and of such extent as he or the appropriate Military Commander may determine, from which any or all persons may be excluded, and with respect to which the right of any person to enter, remain in, or leave shall be subject to whatever restrictions the Secretary of War or the appropriate Military Commander may impose in his discretion; and

“Whereas, The Secretary of War on February 20, 1942, designated the undersigned as the Military Commander to carry out the duties and responsibilities imposed by said Executive Order for that portion of the United States embraced in the Western Defense Command; and

“Whereas, The Western Defense Command embraces the entire Pacific Coast of the United States which by its geographical location is particularly subject to attack, to attempted invasion by the armed forces of nations with which the United States is now at war, and, in connection therewith, is subject to espionage and [51] acts of sabotage, thereby requiring the adoption of military measures necessary to establish safeguards against such enemy operations:

“Now, Therefore, I, J. L. DeWitt, Lieutenant General, U. S. Army, by virtue of the authority vested in me by the President of the United States and by the Secretary of War and my powers and prerogatives as Commanding General of the Western Defense Command, do hereby declare that:

Exhibit X—(Continued)

“1. The present situation requires as a matter of military necessity the establishment in the territory embraced by the Western Defense Command of Military Areas and Zones thereof as defined in Exhibit 1, hereto attached, and as generally shown on the map attached hereto and marked Exhibit 2.”

Then, your Honor, without reading further from the exhibit, from Government's Exhibit 4, there is herein set forth as Exhibit 1 a description of Military Area No. 1, and there is likewise herein set forth what is known as Exhibit No. 2, a sketch or map showing the territory previously described, in which a certain area along the Pacific Coast extending from the borderline of the Dominion of Canada south is marked under the “Military Area Legend”, “Prohibited Zone ‘A-1’”, and from this map it is shown that Portland is included in the area classified as “Prohibited Zone ‘A-1’”.

Government's Exhibit Number 5, this being an official certified copy, issued by Headquarters, Western Defense Command [52] and Fourth Army, Presidio of San Francisco, California, Public Proclamation No. 3, dated March 24, 1942, bearing signature “J. L. DeWitt, Lieutenant General, U. S. Army, Commanding.”

The recitation in Public Proclamation No. 3 is similar to the recitation of powers I have heretofore recited, with this specific provision:

“Whereas, The present situation within these

Exhibit X—(Continued)

Military Areas and Zones requires as a matter of military necessity the establishment of certain regulations pertaining to all enemy aliens and all persons of Japanese ancestry within said Military Areas and Zones thereof:

“Now, Therefore, I, J. L. DeWitt, Lieutenant General, U. S. Army, by virtue of the authority vested in me by the President of the United States and by the Secretary of War and my powers and prerogatives as Commanding General, Western Defense Command, do hereby declare and establish the following regulations covering the conduct to be observed by all alien Japanese, all alien Germans, all alien Italians, and all persons of Japanese ancestry residing or being within the military Areas above described, or such portions thereof as are hereinafter mentioned:

“1. From and after 6:00 A.M., March 27, 1942, all alien Japanese, all alien Germans, all alien Italians, and all persons of Japanese ancestry residing or being within the geographical limits of Military Area No. 1, or within any of the Zones established within Military Area No. 2, as those areas [53] are defined and described in Public Proclamation No. 1, dated March 2, 1942, this headquarters, or within the geographical limits of the designated Zones established within Military Areas Nos. 3, 4, 5, and 6, as those areas are defined and described in Public Proclamation No. 2, dated March 16, 1942, this headquarters, or within any

Exhibit X—(Continued)

of such additional Zones as may hereafter be similarly designated and defined, shall be within their place of residence between the hours of 8:00 P.M. and 6:00 A.M., which period is hereinafter referred to as the hours of curfew.”

This proclamation, Government's Exhibit Number 5, relates to other matters, with particular reference to a regulation concerning prohibited articles, which are not involved in this case.

Government's Exhibit No. 6 is a certified copy of Public Proclamation No. 5, likewise issued under the signature of J. L. DeWitt, Lieutenant General, U. S. Army, Commanding Western Defense Command and Fourth Army, and relates to Proclamations 1 and 2 heretofore issued, by setting forth the classes of persons which may be considered by the military authorities to be exempted from exclusion and evacuation upon furnishing of satisfactory proof to the military authorities.

May it please your Honor, at this time I should like to have these documents marked for identification.

(The documents referred to, so produced, were thereupon marked as follows: [54])

Certified copy of General Orders No. 1, Headquarters Western Defense Command and Fourth Army, Presidio of San Francisco, California, dated December 11, 1941, signed “J. L. DeWitt, Lieutenant General, U. S. Army, Commanding”, was marked for identification Government's Exhibit 8;

Exhibit X—(Continued)

Certified copy of Telegram, bearing date December 11, 1941, addressed to "Commanding General, Fourth Army, Pres. of SF, Calif.," signed "Marshall", was marked for identification as Government's Exhibit 9.)

Mr. Bernard: No objection.

Mr. Donaugh: At this time I desire to offer Government's Exhibits for identification Nos. 8 and 9 in evidence.

The Court: Admitted.

(The documents referred to so offered and received having previously been marked for identification were thereupon marked received as Government's Exhibits 8 and 9.)

Mr. Donaugh: Government's Exhibit Number 8 reads as follows:

"Headquarters Western Defense Command and
Fourth Army

"Presidio of San Francisco, California.

"December 11, 1941

"General Orders

"Number 1

"1. The following War Department radiogram, December 11, 1941, is quoted for the information and guidance of all concerned:

" "The activation of the Western Defense Command [55] including Alaska, is hereby confirmed. It is designated as a theater of operations. The Fourth Army, Second Air

Exhibit X—(Continued)

Force, Fourth Air Force and Ninth Corps Area, including attached units are assigned to this command. Lieutenant General John L. DeWitt is designated as commander.

“2. Pursuant to the authority contained in the radiogram quoted above, the undersigned assumes command of the Western Defense Command and retains command of the Fourth Army.

“J. L. DeWITT,

“Lieutenant General, U. S.

“Army, Commanding.”

Government's Exhibit Number 9 reads as follows:

Priority “Washington DC Dec 11, 1941 621PM

“Commanding General

“Fourth Army

“Pres of SF, Calif

“The activation of the Western Defense Command including Alaska, is hereby confirmed. It is designated as a theatre of operations. The Fourth Army, Second Air Force, Fourth Air Force and Ninth Corps Area, including attached units are assigned to this command. Lieutenant General John L. DeWitt is designated as commander.

“MARSHALL”

The Government rests, your Honor.

(Government rests.) [56]

Exhibit X—(Continued)

Defense Testimony.

Mr. Bernard: Mr. Yasui, will you take the stand.

MINORU YASUI,

the defendant herein, was thereupon produced as a witness in his own behalf and was examined and testified as follows:

The Clerk: Your name is Minoru Yasui? Just state your name. A. Minoru Yasui.

(The witness was thereupon duly sworn.)

Direct Examination

By Mr. Bernard:

Q. Your name is Minoru Yasui?

A. That is correct.

Q. And you are the defendant in this criminal action, are you? A. I am, sir.

Q. The record introduced by the Government shows that your birth was on October 19, 1916, at Hood River, Oregon. Does that conform with your information that that is the date of your birth?

A. It does, sir.

Mr. Bernard: I would like to have this marked for identification, please.

(Stipulation entitled in the above entitled cause, between Charles S. Burdell, of attorneys of the United States of America, and E. F. Bernard, Attorney for the Defendant, was thereupon marked [57] for identification as Defendant's Exhibit 10.)

Exhibit X—(Continued)

(Testimony of Minoru Yasui.)

Mr. Burdell: Oh, I have no objection.

The Court: Admitted.

(Said stipulation, so offered and received, having previously been marked for identification, was thereupon marked received as Defendant's Exhibit 10.)

Mr. Bernard: I would like to say, your Honor, this is a stipulation entered into by the Government and myself whereby certain facts are admitted in the case.

“In the District Court of the United States

“For the District of Oregon

“UNITED STATES OF AMERICA,

Plaintiff,

vs.

“MINORU YASUI,

Defendant.

STIPULATION

“It is hereby stipulated by the parties to the above entitled action that at the trial of the action the following facts are admitted to be true and proof thereof is waived, to wit:

“During and prior to the year 1916 and at the time of the birth of the defendant, Minoru Yasui, the father of the defendant, Masuo Yasui, and Shidzu Yasui Yasui, his wife, the mother of the

Exhibit X—(Continued)

(Testimony of Minoru Yasui.)

defendant were residents and inhabitants of Hood River, Oregon; that during all of [58] said time, the defendant's father hereinbefore named was engaged in business in Hood River, Oregon, as a merchant, and that during all of said times, the defendant's mother hereinbefore named was a housewife, and that neither of the defendant's said parents were in the diplomatic service of any country.

“CHARLES S. BURDELL,

Of Attorneys of the United
States of America

“E. F. BERNARD,

Attorney for the Defendant”

Mr. Burdell: May it be understood, your Honor, that that stipulation is only for the purpose of this case?

The Court: I don't know exactly what that means. Either it is a fact or it isn't a fact. In other words, this Court refuses to try some moot question that is set up by the attorneys for the defense and the Government.

Mr. Burdell: All right, it may be stipulated as a fact, your Honor.

The Court: Stipulation received in evidence.

Mr. Bernard: There has been introduced in evidence here a birth registration. Was your birth ever recorded in any other place?

A. No, it has not.

Q. And, in that connection, I will ask you

Exhibit X—(Continued)

(Testimony of Minoru Yasui.)

whether or not you have ever in your life time received any questionnaire or request for [59] information from the government of Japan relative to you or your willingness to engage in any military activity or any activity in Japan?

A. I have received no such questionnaire from the government of Japan.

Q. Or have you given any information voluntarily along that line?

A. No, sir, I have not.

Q. From your earliest recollection, Mr. Yasui, what was your father's business?

A. Well, from my earliest recollection he has always been a merchant in Hood River, Oregon.

Q. And did he engage in business as a merchant up to the time he was detained by the Government?

A. He was, together with agricultural pursuits and farming.

Q. And was your mother's occupation—did she continue as a housewife throughout the years?

A. She did.

Q. Did you ever take a trip to Japan?

A. Yes, sir, I did.

Q. In what year?

A. To the best of my recollection it was in 1925, I think at the age—when I was about eight years old. We left the United States sometime in July and returned approximately in September. It was just merely a summer vacation.

Exhibit X—(Continued)

(Testimony of Minoru Yasui.)

Q. Was that merely a vacation trip? [60]

A. Yes, to the best of my recollection it was.

Q. Well, did anything particular happen that you recall in Japan at that time that impressed itself on your recollection?

A. Well, no particular factor, Mr. Bernard.

Q. Were you asked when you were over there to take any oath of allegiance or do anything towards taking out citizenship in Japan?

Mr. Burdell: Object to that as immaterial, your Honor.

The Court: The objection is sustained.

Mr. Bernard: I wish to make an offer of proof, your Honor. I offer to prove by this witness that while he was in Japan at that time he did not take an oath of allegiance to Japan or any other country or take any steps to become a citizen of Japan.

The Court: He couldn't. He was a minor. He had no election until after he had passed the age of twenty-one.

Mr. Bernard: I take it, then, the ruling is against me.

The Court: Yes; you may put in an offer of proof.

Mr. Bernard: I would like an exception.

The Court: You may state an offer of proof and I will——

Mr. Bernard: What is that?

Exhibit X—(Continued)

(Testimony of Minoru Yasui.)

The Court: You may state an offer of proof and I will give you an exception.

Mr. Bernard: Well, I think I dictated it into the record. Will you read it.

(The offer of proof was thereupon read by the reporter.) [61]

Mr. Burdell: Object to that as incompetent, irrelevant and immaterial.

The Court: The objection is sustained and the offer of proof is rejected.

Mr. Bernard: May we save an exception?

The Court: Yes, sir.

Mr. Bernard: Q. Where did you go to school?

A. Well, I started grammar school in Hood River; finished high schools, also, at Hood River.

Q. By the way, this trip that you took to Japan when you were about ten years old, were you ever in Japan after that?

A. No, sir, I have never been in Japan since that time.

Q. Were you ever in any foreign country after that?

A. Yes, I believe once in Mexico, in 1937; we crossed the border near some small town to the south of San Diego.

Q. And how long were you there?

A. I think four hours.

Q. Ever resided in any foreign country at all?

A. No, sir.

Exhibit X—(Continued)

(Testimony of Minoru Yasui.)

Q. After you finished high school in Hood River where did you go to school?

A. I attended the University of Oregon.

Q. And how long were you at the University of Oregon?

A. I commenced the pre-law career there in 1933, and commenced the Law School in 1936. I received my Bachelor of Arts degree in [62] 1937 and my Bachelor of Laws in 1939.

Q. You were how old, then, when you finished the school?

A. I believe I was twenty-three years when I finished the University of Oregon Law School.

Q. Have you voted in the United States?

A. I have, sir.

Q. Have you ever voted in any other country?

A. No, sir, I have not.

Q. Now, what date do you say you finished the Law School on, Mr. Yasui?

Mr. Burdell: If the Court please, I object to that as incompetent, irrelevant and immaterial.

The Court: Oh, I think it is preliminary. He may answer.

Mr. Bernard: Q. What date did you say you finished the Law School on?

A. In June of 1939.

Q. And when did you go to work for this office of the Consul General in Chicago?

A. The following year, in April, 1940.

Exhibit X—(Continued)

(Testimony of Minoru Yasui.)

Q. And what did you do in the meantime?

A. Well, pending the results of the bar examination I helped as a ranch hand on my father's farm. In approximately September we heard the results, and having completed the bar I attempted to practice law both in Hood River and, for a short while, in Portland, Oregon. [63]

Q. Now, I wish you would tell the Court how you secured this position in Chicago.

A. To the best of my knowledge, the Japanese Consulate at Chicago was elevated a Consulate General in 1940. There was a need for an enlarged staff at that time. The Consul General newly appointed had been a former Consul here at Portland. There was a letter written by my father to the Consul General stating that I had graduated in law school and that he believed that I would be fit for such a position. I secured letters of recommendation from Dean Wayne L. Morse, of the Oregon Law School, as I recall it a certificate from the Registrar at the University of Oregon, and also various letters of recommendation from people in Hood River and in Portland. Because there was a need for a man who could speak English as well as Japanese and, I suppose also because of some of the records that I had while I attended the University of Oregon, I was selected for that position.

Q. And when did you go to Chicago?

Exhibit X—(Continued)

(Testimony of Minoru Yasui.)

A. As I recall, I arrived in Chicago on April 1st, 1940.

Q. Were you required at that time to take any oath of allegiance?

A. I was not required——

Mr. Burdell: (Interrupting) Objected to, your Honor, as incompetent, irrelevant and immaterial.

The Court: Well, I am not sure that it is incompetent, if he took an oath of allegiance after he arrived at the age of majority. [64]

Mr. Burdell: Well, your Honor, the indictment in this case charges a violation of Public 503, which declares, your Honor, any act in violation of any of the orders issued by the Commanding General of the Western Defense Command, and the defendant is charged with violating Public Proclamation No. 3, which provides that all persons of Japanese ancestry residing or being within the geographical limits of Military Area No. 1 shall observe certain conduct. It is not limited to alien Japanese.

The Court: I know it is not, and that is what makes me doubt its constitutionality; therefore, I hold that the proof is competent to establish whether there be citizenship, notwithstanding that your indictment did not allege that this man was a citizen, therefore, that is the point, I think, in this case, and that is the point that I have asked these gentlemen to be present here as friends of the Court to determine whether or not that is constitutional.

Exhibit X—(Continued)

(Testimony of Minoru Yasui.)

Mr. Burdell: Yes. Does your Honor care to hear argument at this time?

The Court: No, I don't care to have any argument on it right now, because I want to proceed with proof on the subject.

Mr. Burdell: Very well, your Honor.

The Court: And I want to hear proof on both sides, if the question is going to be raised. Proceed.

Mr. Bernard: Would you read the witness the question, Mr. Rauch. [65]

(The question referred to was thereupon read, as follows:

“Were you required at that time to take any oath of allegiance?”)

A. I was not required to take any oath of allegiance when I began my employment with the Consulate General in Chicago.

Q. Or were you required to take any oath of allegiance at any time during your employment?

A. No, sir, I was not so required.

Q. And did you, whether you were required or not, take any oath of allegiance at any time from the commencement to the end of your service there in Chicago?

A. No, sir, I did not.

Q. Now, will you please state to the Court your duties in that position and what you did.

A. I was employed as a general secretary in charge of the correspondence. There was an American fellow by the name of Bob Murphy and

Exhibit X—(Continued)

(Testimony of Minoru Yasui.)

myself that handled like duties. We received the morning mail, submitted them to the Consul General, and the Consul General would submit one of the letters to either Murphy or myself to answer, the reason being that, because of our facility with the English language, we could phrase the letter better than the Consul himself. As soon as these letters were drafted we submitted them to him for approval, and if approved we typed them out and sent them out. Also in connection with our duties [66] on various occasions the Rotary Clubs and various civic organizations would call upon the Consul to send a man to explain the position of Japan in the Far East, or perhaps some club or organization would want to know about flower arrangement. I acted as research on such matters and upon such occasions I did go to such civic meetings or ladies' meetings to make such speeches.

Q. You have mentioned Bob Murphy who was doing work similar to yours. Was he an American?

A. Yes, he was a Caucasian American, born, I believe, in Nebraska.

Q. And were there any other white employees?

A. Yes, there was Frances McDougall, who was a naturalized American, who was the typist for the office.

Q. Now, did the nature of your employment change at all during the time that you were there?

A. No, not particularly. The only possible

Exhibit X—(Continued)

(Testimony of Minoru Yasui.)

change was that the Consul General himself was recalled in 1941, September I believe the month was, and since that time I acted under the Acting Consul General. That was the only nature of the change.

Q. I believe one of the witnesses testified that you said up in Missoula that you were first a secretary and then a sort of public relations man.

A. Yes, I believe that statement was made.

Q. Well, what about that, Mr. Yasui?

A. Well, as I recall my testimony at Fort Missoula, no such [67] statement was made that I was ever a public relations man. However, I did testify, as I do now, that I did make certain speeches there, if that be so construed as public relations.

Q. And did you make speeches with regard to Japan's position in the war with China?

A. Yes, I did, sir.

Q. Were those speeches that you refer to before public bodies? A. Yes, sir, it was.

Q. I mean clubs, and things of that kind?

A. Yes, sir, like Rotary, I believe.

Q. By the way, what was your salary while you were working there?

A. My salary was one hundred twenty-five dollars per month.

Q. When did you first hear of the attack on Pearl Harbor? A. On December 7, 1941.

Q. When did you resign your position?

Exhibit X—(Continued)

(Testimony of Minoru Yasui.)

A. As I recall, on the 8th day of December, 1941.

Q. Did you sever your entire connection with them at that time? A. I did, sir.

Q. And why did you resign?

A. Because I felt that as a loyal American citizen I could not be working for the Japanese Consulate after the declaration of war.

Q. Did you receive any advice on that from anybody?

A. No advice that prompted me to so act, except possibly a telegram from my father, that wired me that now that this country—

Mr. Bernard: (Interrupting) You can't state the contents of it. [68] I would like this wire marked for identification.

(Telegram bearing date December 8, 1941, M. Yasui to Minoru Yasui, so produced, was thereupon marked for identification as Defendant's Exhibit 11.)

Mr. Bernard: Will you hand that to the witness, and ask him if he identifies that as a wire he received from his father.

A. Yes, this is the wire that I received from my father.

Mr. Bernard: I would like to offer the wire in evidence.

Mr. Burdell: The only objection is that it is

Exhibit X—(Continued)

(Testimony of Minoru Yasui.)

immaterial. We do object on that ground. The further objection that it is hearsay and self-serving.

The Court: The Court has ruled that it is pertinent to show this defendant is an American citizen or not. That depends on the question of his intention. The intention may be shown by a great many acts or declarations, and the objection that this is self-serving goes simply to the question of weight rather than admissibility. I think it may throw some light on his intention and is admitted.

(The telegram referred to, so offered and received, having previously been marked for identification, was thereupon marked received as Defendant's Exhibit 11.)

Mr. Bernard: This is a telegram dated December 8th, 1:00 A. M., Hood River, Oregon. "Minoru Yasui, 306 Dearborn Plaza, 1032 North Dearborn Street, Chicago. As war has started your [69] country needs your service as a United States reserve officer. I as your father strongly urge you to respond to the call immediately. M. Yasui."

Q. What did you do about offering your services to your country, Mr. Yasui?

A. Before that——

The Court: (Interrupting) Just a moment. I think that is objectionable.

Mr. Bernard: Well, I don't know what your Honor has in mind. I am offering it also as to his intentions.

The Court: You may ask him what he did

Exhibit X—(Continued)

(Testimony of Minoru Yasui.)

toward offering his services to Japan or the United States, whichever you wish.

Mr. Bernard: All right, I will confine it to the United States. Did you do anything towards offering your services to Japan? A. I did not.

Q. All right, what did you do towards offering your services to the United States?

A. I immediately wired Headquarters, Second Military Area, at Portland, Oregon, offering my immediate services.

Mr. Bernard: I would like to have this marked for identification.

(Letter, bearing date December 8, 1941, addressed to 2nd Lt. Minoru Yasui, signed "E. P. Curtis, Major, A. G. D., Asst. Adj. Gen.", so produced, [70] was thereupon marked for identification as Defendant's Exhibit 12.)

Mr. Bernard: Q. I will ask you to examine the document which has just been marked for identification and tell me what that is?

A. Yes, this is the letter that I received in answer to the telegram that I sent on December 8th.

Mr. Bernard: We will offer the document in evidence.

Mr. Burdell: We feel that it is immaterial, your Honor.

The Court: Let me see it. The Government has introduced evidence of this man's statements that

Exhibit X—(Continued)

(Testimony of Minoru Yasui.)

he was a reserve officer, and this would confirm that. It is therefore received.

(The letter referred to, so offered and received, having previously been marked for identification, was thereupon marked received as Defendant's Exhibit 12.)

Mr. Bernard: (Reading)

“Headquarters Second Military Area

“225 U. S. Court House

“Portland, Oregon

“201-Yasui, Minoru

EPC/f

“2nd Lt., Inf-Res.

December 8, 1941

“Subject: Extended Active Duty

“To: 2nd Lt. Minoru Yasui, Inf-Res.

1032 N. Dearborn Street

Chicago, Illinois

“1. Receipt of your telegram of December 8, 1941, is [71] acknowledged. Your tender of service is appreciated and has been made of record at this headquarters.

“2. No change in the present War Department policy of ordering officers to active duty to fill existing vacancies has been made. When your name is reached on our priority list for active duty, you will be contacted by this headquarters. In the mean-

Exhibit X—(Continued)

(Testimony of Minoru Yasui.)

time, it is suggested that you hold yourself in readiness for an early call to active duty.

“By command of Major General Benedict:

“E. P. CURTIS

“Major, A. G. D.

“Asst. Adj. Gen.”

Mr. Bernard: I hand you what purports to be a telegram, dated December 11th,—and ask first that that be marked for identification.

(Telegram, bearing date December 11, 1941, E. P. Curtis, Assistant Adjutant General, to “2nd Lt. M. Yasui, Inf. Res., 1032 North Dearborn Street”, so produced, was thereupon marked for identification as Defendant’s Exhibit 13.)

Mr. Bernard: Q. I ask you to examine it and state what that is?

A. This is a telegram in answer to the second telegram that I had written to the Second Headquarters.

Q. I see. You had sent a second telegram after the one you have previously referred to? [72]

A. Yes, sir, I had.

Mr. Bernard: We will offer in evidence the telegram identified by the witness.

Mr. Burdell: No objection.

The Court: Admitted.

Exhibit X—(Continued)

(Testimony of Minoru Yasui.)

(The telegram referred to, so offered and received, having previously been marked for identification, was thereupon marked received as Defendant's Exhibit 13.)

Mr. Bernard: (Reading) "December 11, 7:15 P. M. 2nd Lt. M Yasui, Inf Res. 1032 North Dearborn St. Reurtel effective date or details regarding your active duty not yet determined stop await further instructions. E. P. Curtis Asst Adj Gen."

Q. Did you communicate further with the War Department after that?

A. No, not directly from Chicago, to the best of my knowledge.

Mr. Bernard: I will hand you a letter dated March 28, 1942, and ask you—first, I will ask that it be marked for identification.

(Letter, bearing date March 28, 1942, addressed to "2nd Lt. Minoru Yasui, Inf-Res., 704 12th Street, Hood River, Ore.", signed "W. R. Martin, Captain, A. G. D., Asst. Adj. Gen.", so produced, was thereupon marked for identification as Defendant's Exhibit 14.)

Mr. Bernard: Q. The letter now having been marked for identi- [73] fication, I will ask you to examine it and state what that is?

A. This is a letter from the Second Military Area Headquarters that I received here in Portland after I had returned from Chicago, stating my status here in the Reserve Officer Corps.

Exhibit X—(Continued)

(Testimony of Minoru Yasui.)

Mr. Bernard: We will offer in evidence the letter identified by the witness.

Mr. Burdell: No objection.

The Court: Admitted.

(The letter referred to, so offered and received, having previously been marked for identification, was thereupon marked received as Defendant's Exhibit 14.)

Mr. Bernard: This says:

“Headquarters Second Military Area
225 U. S. Court House
Portland, Oregon

“201-Yasui, Minoru,

hjs/vjm

“2nd Lt., Inf-Res.

March 28, 1942.

“Subject: Status.

“To: “2nd Lt. Minoru Yasui, Inf-Res.

704-12th Street,

Hood River, Ore.

“The following War Department letter, file and subject as above, dated March 19, 1942, forwarded by 1st indorsement, Hq. Ninth Corps Area, dated March 23, 1942, is quoted for your information and guidance:

“1. Reference is made to your first wrapper indorsement of February 25, 1942, forwarding report of physical examination [74] dated January 19, 1942, of Second Lieutenant Minoru Yasui, In-

Exhibit X—(Continued)

(Testimony of Minoru Yasui.)

fantry Reserve, (O-360897). The physical defect, defective vision, 8/200 right, is noted.

“2. Waiver of the above noted defect is authorized for limited service under the provisions of letter, this office dated January 7, 1942, file AG 210.31 (12-19-41) RP-A, subject: ‘Waiving of physical defects for limited service officers of the supply arms and services.’

“3. Lieutenant Yasui will be retained in the Infantry Reserve with eligibility for limited service only.

“By command of Major General Benedict:

“W. R. MARTIN,

“Captain, A. G. D.,

“Asst. Adj. Gen.”

Q. Have you ever been called to active service, Mr. Yasui?

A. No, sir, I have not been called to active service.

Q. And have you ever withdrawn your request to be assigned to active service?

A. No, sir, I have never withdrawn such request.

Q. And are you willing to go in active service at any time? A. I am, sir.

Q. Now, I notice that that letter is addressed to Hood River, in March, and the others have been to Chicago. When did you return to the West?

A. I returned to Portland on July 12, 1942.

Exhibit X—(Continued)

(Testimony of Minoru Yasui.)

Q. On when? [75]

A. July—January 12, 1942.

Q. And, with reference to that, when did you go up to the FBI office?

A. On the afternoon of my arrival here in Portland, Oregon.

Q. And what was your purpose in going to the FBI office?

A. I had several conversations with Mr. Splendor, who is the Special Agent of the Federal Bureau of Investigation at Chicago, and he had suggested that it would be a very wise thing for me to keep in touch with the Federal Bureau of Investigation agents and inform them of my removal from Chicago to the West Coast area.

Q. And it was for that reason that you went up there?

A. And incidentally to inquire about my father, whom I had not seen for the last two years.

Q. Now, you had a conversation with Mr. Mize, at which I believe Mr. Davis also was present at least during a part of the conversation. I don't know as there is very much difference between you as to what happened, but I wish you would state your version of that conversation.

A. In general, the conversation as reported by Mr. Mize is correct. We did discuss our school days, and then we went into whether or not the Army at the present time in moving the Japanese-

Exhibit X—(Continued)

(Testimony of Minoru Yasui.)

American citizens along with the enemy aliens was justified or not. Ray Mize posed the question that if I were the Commander in Chief of the Western Defense Area, knowing [76] that an imminent invasion was possible, how would I be absolutely sure that the security of this country would not be in danger. Well, the only logical answer would be to intern the Japanese. However, I asked the academic question, if Mize himself was God almighty how would he prevent wars, to be absolutely sure to prevent wars. Mize answered that he would destroy the people. Of course, that is the extreme view, but we did converse along those lines.

Q. Well, at that time do you know whether there had been any orders removing the American citizens?

A. At that time there was no such order.

Q. And this was a sort of an academic discussion?

A. It was a hypothetical question at the time, yes, sir.

Q. I believe Mr. Mize also said that you were sorry that you had taken the action that you had. I believe that was in a later conversation you had with him.

A. No, I believe that statement had been made at the time. The question was whether I believed any repercussions would happen from my testing the constitutionality of the curfew act, and I be-

Exhibit X—(Continued)

(Testimony of Minoru Yasui.)

lieved that possibly there would be repercussions that would be harmful to the Japanese colony.

Q. I was in error. Your conversation with Ray Mize was on April 3rd, I believe, and the one with Mr. Quinn was on January 12th.

A. As I recall, it was on March 30th. [77]

Q. Your recollection was that it was March 30th? A. Yes, sir.

Q. And what did you have in mind when you made that last statement?

A. Well, there is always a possibility of more stringent regulations being imposed, and, secondly, the public resentment against any one, possibly, testing the constitutionality of an Army order.

Q. Now, Dr. Everson and Mr. Scott testified as to your testimony up there at Missoula. You did appear at the time of your father's hearing before the Alien Board, did you? A. I did, sir.

Q. And what is your recollection as to what you told them about your activities?

A. Well, substantially, the testimony of Dr. Everson and Mr. Scott is correct. I did testify that I was employed at the Consulate General; I told them something of my family background and my education and what I did there in Chicago; also stated the fact that I was a reserve officer, and answered questions in general from the members of the Board.

Q. What is your recollection as to whether or

Exhibit X—(Continued)

(Testimony of Minoru Yasui.)

not you mentioned up there the fact that you had gotten letters of recommendation from Dr. Wayne Morse and others?

A. I didn't hear the question, sir.

Q. What is your recollection as to whether you told the Board that [78] you had also got letters of recommendation from Dean Morse and others?

A. I believe the statement was made that I did receive recommendations from the various deans and officials at the University of Oregon.

Q. Now, one of the witnesses, I believe Dr. Everson, also said that you said you later became public relations man on behalf of the Consul and that you made speeches which the Consul usually looked over and approved before you delivered them.

A. The testimony at the time of the hearing was brought out that I had no discretion in picking the exact subject or in picking the wording of the speeches.

Q. Well, was it a fact that these speeches were approved by the Consul General before——

A. (Interrupting) That is correct, sir.

Q. I see; and you so told the Board?

A. Yes, I did.

Q. Mr. Everson also mentioned that something was said by you about making speeches at Kankakee, some such place as that. Do you recall that place?

Exhibit X—(Continued)

(Testimony of Minoru Yasui.)

A. To the best of my knowledge, I have never been to Kankakee.

Q. Now, have you ever obtained or attempted to obtain naturalization in any foreign state whatsoever? A. No, sir, I have not.

Q. Have you ever taken an oath or made an affirmation or other [79] declaration of allegiance to a foreign state?

A. No, sir, I haven't made any such affirmation or oath.

Q. Have you ever entered into or served in the armed forces of a foreign state?

A. No, sir, I have not.

Q. Or have you ever offered so to do?

A. No, sir, I have not.

Q. Have you ever accepted or performed the duties of any office, post or employment under the government of a foreign state which only nationals of such state are eligible to perform?

A. No, sir, I have not.

Q. Have you ever voted in a political election in a foreign state? A. No, sir.

Q. Or participated in an election or plebiscite in determining the sovereignty over a foreign state? A. No, sir.

Q. Have you ever made a formal renunciation of nationality before a diplomatic or consular agent of the United States in a foreign state?

A. No, sir, I have not.

Exhibit X—(Continued)

(Testimony of Minoru Yasui.)

Q. Or have you made any renunciation of any kind of citizenship in the United States?

A. No, sir, I have never renounced American citizenship.

Q. Have you ever deserted the military or naval services of the [80] United States?

A. No, sir, I have not.

Q. In time of war or otherwise?

A. No, sir.

Q. Have you ever committed any act of treason or attempting by force to overthrow or bear arms against the United States?

A. No, sir.

Q. Or have you ever been convicted of any such offense?

A. No, sir.

Q. By a court martial or by a court of the civil jurisdiction?

A. No, sir, I have not.

Q. And, as far as you know, have you ever, either intentionally or unintentionally, done any act to renounce citizenship in the United States of America?

A. To the best of my knowledge, I have never renounced my American citizenship.

Q. Or have you ever had any intention of so doing?

A. I have had no such intention.

Mr. Bernard: I think, your Honor, that is about all of it. If you are going to have a recess, I would like to check my notes.

The Court: The Court will take a recess.

Exhibit X—(Continued)

(Testimony of Minoru Yasui.)

(A short recess was thereupon had, after which proceedings were resumed as follows:)

The Court: Are you ready, Mr. Bernard? Are you ready to go ahead? [81]

Mr. Bernard: Yes.

Q. Mr. Yasui, I forgot to ask you whether or not you have ever taken an oath of allegiance to the United States of America?

A. Yes, I have taken an oath of allegiance to the United States of America in December, 1937, upon the completion of my R.O.T.C. course from the University of Oregon. It was necessarily postponed to December because I had not reached my majority until October.

Q. You completed it in October, but you had to wait until you were of age to take the oath?

A. I completed it in June.

Q. Now, at the time of your arrest on this charge what were you doing?

A. At the time of my arrest?

Q. Yes. I don't mean at the exact moment. I understand you were waiting to go into the Army, but were you doing any work in the meantime?

A. I was working here, employing myself as an attorney at law, in the practice of law, in Portland?

Q. And you were in actual practice at the time?

A. I was, sir.

Exhibit X—(Continued)

(Testimony of Minoru Yasui.)

Q. Now, you have related your employment with the Consul General's office in Chicago. I will ask you whether you have had any employment or connection in any way, directly or indirectly, with the Japanese government except in that employment? [82]

A. No, sir, I have had no such other connection.

Q. Where are you residing now?

A. At the present time I am at the W.C.C.A. Assembly Center at North Portland, Oregon.

Q. That is where the Japanese are now being detained for twenty-four hours a day?

A. That is correct, sir.

Q. And do you know where your father's residence is?

A. I understand it to be at Camp Livingston, Louisiana.

Q. And where is your mother?

A. I believe in Pineville, California.

Q. Have you got some sisters?

A. Yes, sir, one sister, I believe now is in Denver, Colorado.

Q. She was younger than you?

A. Yes, sir. She just graduated at the University of Oregon.

Mr. Bernard: I think you may cross-examine.

Exhibit X—(Continued)

(Testimony of Minoru Yasui.)

Cross-Examination

By Mr. Donagh:

Q. When did you graduate at the University of Oregon?

A. I graduated at the University of Oregon proper in 1937.

Q. And were admitted to the bar that year?

A. No, sir; then I was in the University of Oregon Law School and graduated in 1939.

Q. And when did you start to work for the Japanese Consul General in Chicago? [83]

A. During April, 1940, the year following my graduation.

Q. I see; and in the meantime I believe you said you had practiced law at Hood River?

A. For a short time.

Q. Do you speak Japanese? A. I do, sir.

Q. And where did you learn to speak Japanese?

A. I learned it from my parents.

Q. Do you speak Japanese in your home?

A. To a certain degree, yes, sir.

Q. Have you spoken Japanese for a good many years? A. Ever since I can recall.

Q. Ever go to a Japanese language school or Japanese school of any kind?

A. Yes, sir, for three years.

Q. Whereabouts was that?

A. At Hood River, Oregon.

Q. Whereabouts?

Exhibit X—(Continued)

(Testimony of Minoru Yasui.)

A. At Hood River, Oregon?

Q. At Hood River, Oregon. What was the name of that school?

A. I think they called it the Japanese language school.

Q. Japanese language school? A. Yes, sir.

Q. Is that a school where other Japanese young men and young women attended? [84]

A. Yes, sir.

Q. All Japanese students? A. Yes, sir.

Q. What was the practice up there in regard to Japanese children attending the school?

A. Well, there was a session of reading and then a session of writing, and then we reviewed what we had done in the mornings in the afternoons and Saturdays, and, well, it was just done in an attempt to teach us to read and write the Japanese language. It is very difficult and takes considerable study to master it.

Q. Was it attended pretty generally by the sons and daughters of Japanese families in Hood River?

A. Yes, fairly.

Q. Do you recall what years you attended?

A. Not exactly, no, but I was attending grammar school at the time. Probably, oh, about prior to 1930, about '26, '27, on up to about 1930. I don't recall exactly the years.

Q. Did you go to any other Japanese school except that one? A. No, sir, I did not.

Exhibit X—(Continued)

(Testimony of Minoru Yasui.)

Q. Did you have any Japanese societies or organizations which you attended in Hood River or elsewhere?

A. By Japanese societies what do you mean?

Q. Organizations or associations of Japanese people?

A. There is the Japanese Methodist church, of which my father [85] and mother are members, that I attended on Sundays; and the Japanese-American citizens League, composed of American citizens of Japanese ancestry; and that is about all the Japanese organizations that I have attended.

Q. Ever belong to any Japanese fencing clubs?

A. No, sir.

Q. Or riding clubs of any kind?

A. No, sir.

Q. Are you a member of the Methodist church?

A. I am, sir.

Q. You say you are? A. Yes, sir.

Q. Have you ever been a member of any other church? A. No, sir, I have not.

Q. In the Japanese language school what language is used there?

A. Both English and Japanese.

Q. Both English and Japanese; but you went there to learn and become proficient in Japanese, is that it?

A. To attempt to become proficient, yes.

Exhibit X—(Continued)

(Testimony of Minoru Yasui.)

Q. Is there a Japanese farmers' association in your community, your home community?

A. No, I think not, not in Hood River.

Q. You never belonged to it yourself?

A. I was too young at the time.

Q. And have never joined it since, since you have become older? [86]

A. No, sir.

Q. How long after you went to work for the Japanese Consul General did you register with the Secretary of State in Washington, D. C.?

A. The registration was taken care of by the office. The Consul General's did that for us as employees. As I recall, even the chauffeur of our office was registered with the Secretary of State.

Q. You had, however, had occasion to work there for a considerable period of time before your registration was filed?

A. Well, to the best of my knowledge, it should have been, if not, filed twice, because I signed two documents, once in '40 and once in '41.

Q. I see. The total period of your employment there was how long?

A. Approximately from April 1st until December 8th,—that is, April 1st of 1940 until December 8th of 1941.

Q. Now, I believe you stated on direct examination that the Japanese Consul General by whom you were employed was the former Japanese Consul in Portland?

A. That is correct.

Exhibit X—(Continued)

(Testimony of Minoru Yasui.)

Q. Did I understand that correctly?

A. That is correct, sir.

Q. And what was his name?

A. His name was Hiroshi Asinu.

Q. And how long ago was he the Japanese Consul here in Portland?

A. I do not recall. I don't remember him directly. [87]

Q. You didn't know him directly?

A. No, sir.

Q. Then your contact with him was through whom? A. My father.

Q. Did your father and the Consul have any close contacts, so far as you know?

A. At what time are you speaking, sir?

Q. I am just asking you. You say your contact with the Japanese Consul General was through your father. A. Yes, sir.

Q. Had your father and the Consul General been associates over a long period of time?

A. Well, as I understand, the Hood River community has about five hundred Japanese, and every Consul here goes up to Hood River about once a year to contact various people, and my father through those contacts had undoubtedly met Mr. Asinu.

Q. And it was through that contact by your father with the Japanese Consul that the letter he wrote soliciting employment for you is what got you your position, is that it?

Exhibit X—(Continued)

(Testimony of Minoru Yasui.)

A. As I understand, that together with what I had achieved at the University of Oregon.

Q. Your father has been rather active in the Japanese colony in Hood River, hasn't he?

A. He has been very, very active in advancing the betterment of that community, yes, sir. [88]

Q. Contributed money to the Japanese war fund?

A. As to that I have no knowledge.

Q. Well, isn't it a fact that your father testified in your presence before the Alien Hearing Board that he had contributed money to the Japanese war fund?

Mr. Bernard: We will object to that, your Honor, on the ground that it is an attempt to do indirectly what they could not do directly. This young man would not be bound, under the circumstances there prevailing, by anything that his father said in that hearing.

The Court: No, I don't think it is binding. I will sustain the objection.

Mr. Donagh: Q. Were you present at the ceremony in the Japanese Consul's office in Portland when your father was given a high honor by the Japanese government in 1940?

A. No, sir, I was not.

Q. You are aware of the fact that he received recognition by the Japanese government?

A. For the work that he had done in promoting

Exhibit X—(Continued)

(Testimony of Minoru Yasui.)

better relations between the Japanese and Americans in Hood River Valley, yes.

Q. How long ago did you say you returned to Japan?

A. Well, to the best of my recollection, after I returned to this country I became nine years old. That would make it in 1925.

Q. You went over there, then, when you were——

A. Eight and a half, approximately.

Q. Eight and a half. [89]

Q. You returned with your parents, with your father?

A. Yes, sir, my mother and my father went to Japan to visit their parents, or my grandparents.

Q. How long were you there?

A. Approximately three months, during the summer vacation.

Q. Did you go to school or engage in activities of your own there under the guidance of your parents while you were there?

A. No, sir; it was the summer vacation. We just went on a vacation to see the grandparents and to visit.

Q. Did you return there at any time?

A. No, sir.

Q. That is your only trip?

A. That is my only trip.

Exhibit X—(Continued)

(Testimony of Minoru Yasui.)

Q. Now, in regard to your work in Chicago, you had occasion to deliver speeches occasionally at the request of the Consul General?

A. That is correct, sir.

Q. How many of those public appearances would you say you made?

A. Well, I can't recall the exact number, but during the eighteen or twenty months I was there approximately once a month.

Q. And where would you receive your directions to deliver a speech at a certain time?

A. From the Consul General.

Q. From the Consul General?

A. Or the Acting Consul General.

Q. And I believe you testified a moment ago that you prepared [90] these talks but they were approved by the Consul General?

A. Yes, sir, the procedure was that he would suggest a particular topic and talk over the general outline of the speech, which I would put into English, submit it to him for approval, and if approved then I gave the speech itself.

Q. But you said that you had no discretion in what you did, is that it?

A. That is, I was under the direct supervision of the Consul General.

Q. In other words, you did and said what the Consul General wanted you to do?

A. Virtually, yes, sir.

Exhibit X—(Continued)

(Testimony of Minoru Yasui.)

Q. Well, now, when you went to work for the Japanese government, through the Japanese Consul General, you were aware, were you not, that conditions between Japan and the United States over a period of a number of years had caused considerable comment and difficulty in the exchange of messages, indicating the possibility of strained relations between this country and Japan? You knew of that, did you not? A. Yes, I did.

Q. Did you not know that even as far back as 1927—or '37, rather, that an American gunboat and American sailors had been fired on by the Japanese, and that that and a series of companion acts in China, in the International Settlement, where American citizens were involved, had caused a strained conditions between [91] those two countries?

A. Yes, I understood all those things and it was my purpose when I worked for the Consul General of Japan possibly to work for a better relationship. The letter from Dean Wayne L. Morse particularly pointed out that a person born in this country of Japanese parents might contribute not only to the peace of this country but the peace of the world by attempting to explain the position of Japan, to bring out economic conditions. It proved subsequently that we were wrong.

Q. But you testify that you had no discretion

Exhibit X—(Continued)

(Testimony of Minoru Yasui.)

in what you did, that you did what you were told to do by the Japanese Consul?

A. That is correct.

Q. And did not exercise your opinions as an American citizen, but did what the agent of the Japanese government asked you to do and said what he asked you to say?

A. That is correct, to bring out what the Japanese government has to say to the attention of the American people, to express it so it could be understood.

Q. And well knowing that the attitude of this Government and the American people was contrary to the policy of Japan that you were defending, speaking about?

A. Because, as I said before, I thought it was my contribution to the preservation of peace. As I admitted before, we were wrong, but that was my sincere purpose in working for the Consulate General of Japan. [92]

Q. When you spoke to Special Agent Mize and Special Agent Davis of the FBI and made the comment which has been referred to here and which I believe you testified to on direct examination, that under certain conditions the Japanese on the Pacific Coast should be interned, did you make any distinction in that between aliens and Japanese-Americans? What was your attitude that you expressed to Mr. Mize and Mr. Davis?

Exhibit X—(Continued)

(Testimony of Minoru Yasui.)

A. At that time the hypothetical question arose, how would we be absolutely sure, how would we absolutely protect the security of this country, in case of an invasion by Japan? In answer to a hypothetical question like that, of course, the obvious answer would be either to destroy or to intern all the Japanese and Japanese Americans, that is the only absolutely sure way, but that is purely a theoretical question.

Q. That is true; but your answer to the question was the internment of the Japanese, Japanese aliens or Japanese-Americans; that was the answer you gave them? In answer to the question, that is what you gave as your opinion?

A. That is correct, yes, as far as theory and logic is concerned.

Q. Now, you have indicated that you have had some regret by reason of possible repercussions by what you have done concerning your violation of the curfew hour. Has some resentment come to you on the part of Japanese in that connection?

A. No, sir, there has been no resentment. The only reason I feel that perhaps it is too bad is to be opposing something that the [93] Government does, because I feel that this is my government too, and it is then too bad to have to oppose the orders of our constituted authorities, but I feel in this particular case that it must be done.

Q. And have you had discussion with other

Exhibit X—(Continued)

(Testimony of Minoru Yasui.)

Japanese out at the Assembly Center in North Portland on your action? A. Very few.

Q. What is the attitude of the people out there?

Mr. Bernard: I don't think that is material, your Honor. We object to it.

The Court: The objection is sustained.

Mr. Donagh: Q. As a matter of fact, you have had very little discussion with Japanese out at the Center, have you?

Mr. Bernard: I object to that, also.

The Court: The objection is sustained.

Mr. Donagh: Q. How many times have you contacted by telegram or letter officials of the Army concerning going into the service since you have returned to Oregon?

A. Since I have returned to Oregon?

Q. Yes.

A. On December 19th I was requested to report for active—for a physical examination. On the 19th I was at Vancouver. Subsequent to that I called at the office of—I don't recall the exact date, but sometime in January—to see if any list had been compiled whereby I would have to go into immediate [94] active service. At that time they could not inform me. I think I notified them of my change in address from Chicago to Hood River, Oregon, and that, I think, is about the sum of my contact with the Second Military Headquarters.

Exhibit X—(Continued)

(Testimony of Minoru Yasui.)

Q. But you have not been called for active service, have you? A. No, sir, I have not.

Q. You testified, as I recall, on direct examination to certain other employees employed in the Japanese Consul General's office in Chicago. How many employees were in that office, in round numbers?

A. In March, or, rather, April of 1940 there were approximately ten? Q. Sir?

A. Approximately ten in 1940.

Q. Approximately ten; and of those you and, I believe, the young lady you spoke of——

A. (Interrupting) Yes, sir.

Q. (Continuing) ——were the American citizens in the office?

A. No, sir, there were four American citizens.

Q. Four American citizens. Isn't it a fact that speeches that you delivered there were in justification and defense of the Japanese war policy?

A. Rather than that, it was an attempt to show the economic differences that existed between China and Japan, to try to point out whereby those differences could be resolved. I have [95] never advocated war between Japan and the Chinese. As a matter of fact, I don't think any responsible Japanese ever has. Those are some of the speeches that I did make. On the other hand, I did make speeches before the University of Chicago, some group there, concerning the flower arrangements,——

Exhibit X—(Continued)

(Testimony of Minoru Yasui.)

Mr. Bernard: (Interrupting) A little louder. I didn't hear you.

A. (Continuing) —Down at Brent House, concerning the history of the Japanese Empire. Various speeches of that nature I did make, yes.

Mr. Donaugh: Q. Now, during the course of your employment there, acting under the direction of the Japanese Consul General, Japan and China were continuously at war. It wasn't a question of you or anyone else advocating war on Japan. War existed. Now, isn't it a fact that your talks and the subjects of your talks were in justification of the Japanese war and attacks on China?

A. Well, practically, there was a war existing. In legal theory no war existed. However, the point that I was bringing out, that probably the differences between China and Japan could be resolved without resort to arms. I have never condoned the military activities of Japan, but attempted to bring about an understanding to the American people that perhaps there is some economic basis for such a war.

Mr. Donaugh: I believe that is all. [96]

Redirect Examination

By Mr. Bernard:

Q. Just one or two questions, Mr. Yasui. About your registration in Washington, D. C.,—do you know whether the other employees at the office were also registered?

Exhibit X—(Continued)

(Testimony of Minoru Yasui.)

A. Well, according to the Consul General, yes, they were. The Consulate General staff took care of our registration for us.

Q. And was your registration taken care of by the Consul General?

A. That is correct, sir. We signed the documents and they were sent in by—I believe submitted by the Embassy at Washington.

Q. This Japanese school, did you attend that while you were also attending the American schools, public schools? A. Yes, sir, I did.

Q. When would you attend the Japanese schools?

A. Generally we would attend Friday afternoon after the American schools, and then on Saturday mornings.

Q. Now, he asked if your father hadn't been active in the Japanese colony there. Do you know whether your father was very active among the white people in Hood River?

A. He was very active among the white people, yes, sir.

Q. In what connection?

A. He was a member of the Rotary Club. He was also a Director of the Apple Growers' Association, which is the biggest fruit cooperative in that particular region. He also attempted to bring about a better feeling among that community. As you [97] recall, in Hood River there was quite a

Exhibit X—(Continued)

(Testimony of Minoru Yasui.)

bit of anti-Japanese feeling earlier, approximately in 1906 and thereabouts. Well, through the efforts of my father and the efforts of people like him the community there settled down to a normal, peaceable community, whereby the Japanese and the American farmers cooperated together in marketing their products and bringing themselves mutual return.

Q. Now, you have testified that you made speeches and took your orders from the Consul General. I will ask you whether or not you were ever asked—strike out “asked”—whether you ever made a speech or did anything which you considered detrimental to the United States of America?

A. No, sir, I have never done such a thing. I couldn't have done such a thing.

Q. And were you ever asked so to do while you were there employed? A. No, sir, I was not.

Mr. Bernard: I think that is all.

The Court: Just a moment.

Mr. Bernard: I think, to complete the record, your Honor, during the cross-examination of one of the Government's witnesses I had identified the card which we showed the witness, and I will ask that that be introduced in evidence. I think it is Exhibit Number 2.

Mr. Donagh: Exhibit Number 1.

Mr. Bernad: Exhibit Number 1. [98]

The Court: Admitted in evidence.

Exhibit X—(Continued)

(Testimony of Minoru Yasui.)

(The card referred to, so offered and received, having previously been marked for identification, was thereupon marked received as Defendant's Exhibit 1.)

The Court: Are you through?

Mr. Bernard: Yes, I am.

Recross Examination

By Mr. Donagh:

Q. Just one question: Isn't it a matter of fact that there has been considerable anti-Japanese feeling in Hood River since December 7th?

A. As to that I am in no position to answer, because I have not been continuously a resident of Hood River since December 7th. I arrived in Portland on January 12th, 1942, returned home probably for two or three days, and for the most part I was here in Portland practicing law, so I don't know definitely the position of the American public in Hood River.

Q. As a matter of fact, you have spent considerable time at Hood River, haven't you, since you returned to Portland—since you returned to Oregon?

A. Considerable time? By that you mean how long?

Q. I mean ample time for you to have the opportunity of knowing Japanese sentiment on the part of Americans or anyone else.

A. I know that the people that understand the

Exhibit X—(Continued)

(Testimony of Minoru Yasui.)

Japanese-Americans, [99] who know that they are good American people, have always said that they would expect us to do our part. My brother was the chairman of the bond drive to buy Liberty—or Defense Bonds and Stamps. They have the confidence of the people, in my opinion.

Mr. Donagh: That is all.

Mr. Bernard: That is all.

The Court: May I——

Mr. Bernard: Yes.

The Court: Just a moment. I am going to submit this to you, Mr. Bernard: I should like to ask some questions, but I will not insist upon it over objections.

Mr. Bernard: Well, under the peculiar facts of this case, I will be glad to have the witness answer any question your Honor wants to ask him. I would prefer it that way, and I know he would.

The Court: Do you know of one Matsuoko?

A. Yes, sir.

The Court: Who was he?

A. He was an ex-Foreign Minister of Japan.

The Court: And a graduate of the University of Oregon?

A. That is correct, as I understand, sir.

The Court: Do you know him personally?

A. No, sir, I do not.

The Court: You have read, during these years and since you [100] became associated with the

Exhibit X—(Continued)

(Testimony of Minoru Yasui.)

Consulate General of Japan in Chicago, concerning the attitude that he has taken regarding American-Japanese relations?

A. Well, I have heard a great number of stories, and I haven't believed some of them. Some of them I have believed, yes.

The Court: A good deal of publicity has been given to his views.

A. Yes, sir, there have.

The Court: And are they not definitely anti-American?

A. Well, I believe it is hard to so believe whether he is actually anti-American. I think that he is more pro-Japanese than anti-American.

The Court: You say you don't know him personally?

A. No, sir, I do not. You see, he graduated——

The Court: (Interrupting) Did your father know him?

A. I doubt it.

The Court: You knew of those utterances, however, before you accepted this position, did you?

A. Yes, sir, I did.

The Court: What is Shinto?

A. Shinto? As I understand, Shinto is the national religion of Japan.

The Court: Do you give adherence to its precepts?

A. My father and mother were Methodists in

Exhibit X—(Continued)

(Testimony of Minoru Yasui.)

Japan, and I myself have been a Methodist in this country and I don't know the [101] precepts of the Shinto religion.

The Court: Was not Shinto practiced in your household?

A. No, sir.

The Court: By your father and mother?

A. It was not, no, sir.

The Court: That includes some of the phases of ancestor worship, does it not? You know enough about it to know that.

A. Yes, if I understand it, that is so.

The Court: Does the Emperor of Japan have a religious capacity?

A. Well, I am not really versed enough to state definitely, but I understand that he has, yes.

The Court: And do you give adherence to that belief?

A. I do not. To me he is a human being.

The Court: And you do not accept divine pretensions on the part of the Emperor of Japan?

A. No, sir, I do not.

The Court: Nor the belief of the Japanese people to that effect?

A. No, sir, I do not.

The Court: Were offerings ever made in the graveyard or before the grave of any of the people of your family?

A. Offerings? Floral offerings, yes, on Memorial Day and on Sundays.

Exhibit X—(Continued)

(Testimony of Minoru Yasui.)

The Court: Were there not food offerings placed?

A. There were no food offerings placed. Both my father and mother [102] are good, devout Methodists. They are really Christians.

The Court: Do you believe in the sanctity of an oath?

A. I do, sir.

The Court: As administered in this court?

A. I do, sir.

The Court: Have you accepted an oath of allegiance to the United States?

A. I did.

The Court: And on that occasion did you accept some other obligations?

A. To preserve and defend the Constitution of the United States, yes.

The Court: And—Do you remember the rest of that oath?

A. No, sir, I do not.

The Court: And to obey—do you remember that part of it—to obey the orders——

A. (Interrupting) — Yes, sir.

The Court: Under certain circumstances?

A. Yes, sir.

The Court: Can you repeat that part of it?

A. I cannot repeat it.

The Court: Do you know the substance of it?

A. In substance it is to obey the commands of

Exhibit X—(Continued)

(Testimony of Minoru Yasui.)

the commanding officer upon proper authority in time of active service, or something to that effect. [103]

The Court: Do you remember anything about the President of the United States, the orders of the President of the United States?

A. Vaguely, yes, sir.

The Court: You still hold a commission as a reserve officer in the Army of the United States?

A. I do.

The Court: Do you still think that is in effect?

A. I believe so.

The Court: You haven't resigned it?

A. No, sir.

The Court: So far as you know, it has not been cancelled?

A. So far as I know, it has not been cancelled.

The Court: Is there any obligation on you, under those circumstances, to obey an order of the Commanding General of the Western Command or of the President of the United States as Commander-in-Chief of the Armies of the United States?

A. Yes, I believe that there is a certain obligation as an American citizen to respect the Constitution of the United States.

The Court: I am not speaking of your obligation as an American citizen. I am speaking of your obligation as a reserve officer in the Army of the United States.

Exhibit X—(Continued)

(Testimony of Minoru Yasui.)

A. At the time of my active commission, active service, I will obey any command or order of my commanding officer.

The Court: You don't think that your oath you have taken [104] in accepting a reserve commission doesn't require you to obey any order of the Commander-in-Chief of the Armies of the United States until he calls you to active service?

A. As a private citizen——

The Court: I am not talking about your obligation as a private citizen. I am talking about your obligation as a reserve officer of the United States Army.

A. Well, as a reserve officer, yes.

The Court: What are the obligations?

A. To hold myself in readiness for active service at any time; to obey the Constitution of the United States and the laws of the United States.

The Court: And you thought there was no special obligation on you to obey this particular order?

A. Yes, I took that into consideration, but I feel that, after all, this country is dedicated to the proposition that all men are created equal, that every American citizen has a right to walk up and down the streets as a free man, and I felt that these regulations were not constitutional.

The Court: If as a Second Lieutenant on active duty you had been given the same order by the

Exhibit X—(Continued)

(Testimony of Minoru Yasui.)

Commanding General of the Western Department
would you have obeyed it?

A. I would have, sir.

The Court: And what distinction do you make
now?

A. Because I am now, at the present time, a
civilian. [105]

The Court: Notwithstanding you hold a reserve
officer's commission?

A. That is correct, sir.

The Court: And in the event that you were on
active duty would you then think that it was proper
to by indirection disobey such a command by in-
voking other people Japanese people, to test the
constitutionality of this as a law?

A. You say if I were in active service?

The Court: Yes.

A. No, I would not, because at that time, if I
were in active service, I would obey the command
of my commanding officer, wherever he sent me.

The Court: No matter where he sent you?

A. Yes.

The Court: And even though they were not
directly expressed?

A. Yes, sir.

The Court: And yet you think you had no obli-
gation in that regard, because you had not been
ordered to active service?

A. In regard to my personal self, yes, that is
correct.

Exhibit X—(Continued)

(Testimony of Minoru Yasui.)

The Court: Isn't there also a regulation to the effect that no reserve officer of the United States shall leave the American continent of the United States without registering with the War Department, whether on active duty or not?

A. As to that I am not positive. I believe that there is some similar regulation. [106]

The Court: Would you obey that order?

A. I believe I would, sir.

The Court: Why?

A. Because, after all, it pertains to a person on active service, directly so.

The Court: Would you also construe the oath of allegiance to allow you to disobey an order, any order, that is incumbent upon an American citizen?

A. I didn't understand.

The Court: I say, would you also construe the oath of allegiance so that you could disobey an order binding on other American citizens?

A. No, sir, I could not.

The Court: I think that is the extent of my examination. Do you have any further questions?

(Witness excused.)

Mr. Bernard: The defendant will rest his case, your Honor.

(Defendant rests.) [107]

Exhibit X—(Continued)

Rebuttal Testimony.

Mr. Burdell: Mr. Goetze.

GERHARD GOETZE

was thereupon produced as a witness in rebuttal and was examined and testified as follows:

The Clerk: State your name, please.

A. Gerhard Goetze, (spelling) G-e-r-h-a-r-d G-o-e-t-z-e.

(The witness was thereupon duly sworn.)

Direct Examination

By Mr. Burdell:

Q. Mr. Goetze, is that it? A. Goetze.

Q. What is the nature of your employment, Mr. Goetze?

A. I am Secretary and Business Agent of the Lumber & Sawmill Workers Local 3.

Q. And what is the jurisdiction of that union?

A. All the sawmills that are organized under the Local in the City of Portland.

Q. And the members of the union are engaged in what business, Mr. Goetze?

A. Lumber manufacturing.

Q. Does that union include all laborers in this area who are engaged in working in lumber mills and lumber plants?

A. Some of them are not, there are some of them that are not organized under our Local, but all the larger mills. [108]

Exhibit X—(Continued)

(Testimony of Gerhard Goetze.)

Q. How many members are there in the union?

A. About twenty-two hundred.

Q. About how many?

A. Twenty two hundred.

Q. Now, Mr. Goetze, acting in your official capacity, have you at any time recently been asked to settle certain disputes which arose among the laborers and their employers concerning the employment of Japanese?

A. Well, there was no dispute between the employers and the working men. The dispute was just amongst the men themselves.

Q. And did you have any part in settling that dispute or carrying on negotiations with respect to it?

Mr. Bernard: I would like to object to this line of interrogation, your Honor, as being wholly immaterial to any issue in this case and as not being proper rebuttal testimony.

The Court: I don't see the purpose of it, Mr. Burdell.

Mr. Burdell: Well, if the Court please, as I understood some of the testimony introduced by the defendant, it seemed to be directed to some showing that the particular order which is here challenged was an unreasonable order, and it seemed to me to be directed toward overcoming the presumption that exists that all legislation and orders passed executed pursuant to the power granted under the Constitution are reasonable. Such a pre-

Exhibit X—(Continued)

(Testimony of Gerhard Goetze.)

sumption does exist. Now, as I understood the testimony of the defendant, some of it, at least, was directed to a rebuttal of [109] that presumption, and I am attempting to rebut the rebuttal in this manner, by showing that the regulation, that is, Public Proclamation 3, was reasonable.

The Court: What do you say to that?

Mr. Bernard: Well, my position is this, your Honor, that I do not concede that the fact that there have been some labor troubles between white people and Japanese would affect the question one way or the other as to whether or not the Government has a right to discriminate against Japanese citizens entirely because of their race. The obvious answer would be if those Japanese had been engaged in doing anything wrong there were means to prosecute them, and how the fact that there might have been some isolated labor trouble in some locality between Japanese and white people should justify a discrimination against my client, who was not a party to that, solely on the ground of his ancestry, we object to as wholly immaterial to any issue in the case.

Mr. Burdell: If the Court please, in the first place, I can and will show that those disputes such as I am attempting to offer evidence concerning were not isolated, I can show that they were so widespread that they threatened to affect the entire economy of the Northwest, for that matter, the

Exhibit X—(Continued)

(Testimony of Gerhard Goetze.)

Pacific Coast, that they were so widespread that they threatened to affect the very war production effort. Now, counsel in his statement to the Court just now assumed that this discrimination, or this classification, [110] was based solely on race. I will propose to show, if the Court please, that the classification is not based on race, but in fact is based on certain circumstances, conditions, acts and happenings, that they occurred as a result of the existence of a race differential rather than being based on race in the abstract. In other words, if the Court please, this classification that has been exerted in this case is not a classification based upon race, as it was in the *Buchanan vs. Worley* case, where there was a discrimination between Whites and Blacks; it is not a discrimination based on color alone. The classification in this case, if the Court please, is based on all these many facts, happenings and occurrences that have existed here in the past few months that have arisen as a result of distinction, the race distinction, between Japanese and Americans, not on a race alone, but upon many things that occurred and many acts that may occur as a result of that race discrimination. Now, we propose to show that prior to the time of the issuance of Executive Order 9066, when President Roosevelt vested power in the Commanding General of the Western Defense Command to issue certain regulations regarding the conduct of Japa-

Exhibit X—(Continued)

(Testimony of Gerhard Goetze.)

nese citizens and aliens, prior to that time there were threats of riot, even, in our vital industries which threatened to affect and destroy and hamper and destroy the entire war economy and the very war effort which is taking place in this vital area at this most critical time, and it was only after the issuance of certain regulations, and only [111] after Lieutenant General DeWitt had declared that he intended to promulgate certain regulations, that the danger and the imminence of these troubles and these disputes and these riots were overcome. My thought is, if the Court please, that this is not a discrimination against the Japanese people any more than it is a discrimination for them. I think that the mere fact, your Honor, that this is only the second, I believe, or possibly the third, case of this sort on the entire Pacific Coast, where there are thousands and thousands of Japanese citizens, evidences the fact that the Japanese people themselves realize that their own safety demands that there be a certain type of regulation, of restriction of this nature, and that is what I propose to show, that their own safety does demand that type of thing,—not only their own safety, but the safety and efficiency of our own war production efforts.

Mr. Bernard: If your Honor pleases this is the first time we ever heard that advocated as an argument for the violation of the due process of law clause of the Constitution, if it is a violation, that

Exhibit X—(Continued)

(Testimony of Gerhard Goetze.)

that violation would be justified because in the opinion of the Government the defendant would be benefited by it. Now, I say this is a regulation based entirely upon color and race; it is so on the very terms. If this regulation had provided that Japanese citizens who had been engaged in any trouble, that he proposes to develop by this witness, or had classified the citizens who had done things that were inimical [112] to the welfare of the Government, that might be one thing, but this regulation proposes to and does in fact apply against Japanese citizens entirely because of their race and not because of anything that any one of them has done, and for that reason we have objected to the testimony.

The Court: I will sustain the objection.

Mr. Burdell: That is all, Mr. Goetze.

(Witness excused.)

Mr. Donough: May it please the Court, I desire to advise your Honor of the availability of a man who is familiar, by reason of long residence and contact, with the Orient, and in particular the Japanese people, a distinguished scholar, educator, who is available to testify as to the result of his contacts and investigations and long years of study of the Japanese, both alien and American-born, with the Japanese as a race of people and their ideals and culture and their type of loyalty, and their type of loyalty under circumstances such as

Exhibit X—(Continued)

the present conditions of war between Japan and the United States. Now, this man is here as an expert, in our opinion, and, in view of the nature of this case, before the Government closes its case I desire to inform the Court of the availability of this man should he have testimony which the Court will wish to hear.

Mr. Bernard: Well, your Honor, if this man has any evidence against my client, of course I can't object to it, but I certainly am going to object to any testimony or dissertation by [113] some man as to his conclusions as to what some of the Japanese might do under certain conditions. In the final analysis, it is not a subject of expert testimony at all, and I would, therefore, object to it unless—if he has any evidence against my client I have no objection to it.

The Court: Well, I think this might have been better used on cross-examination. Since it has not been used, why, I will exclude the general offer. I can't, of course, tell from this general offer what the specific matters are to be proved, and I will say that if it is just general like that, why, I have no interest in hearing it. If you wish to produce this man and ask him some questions, why, put him on the stand and I will rule on the questions as they come up.

Mr. Donaugh: Well, obviously, your Honor, the witness that we would present has no acquaintance whatever with the defendant in this case. His testi-

Exhibit X—(Continued)

mony would deal with the Japanese and their attitude, the basis of race culture, religion, both here in America and in Japan, on the basis of his experience, and it would only be on that basis that we could present him to you, and I only advise the Court of his presence here should his testimony be of interest to your Honor.

The Court: I might say that I have no interest in this matter at all. You call him as a witness, if you want to, and put him on the stand and ask him whatever questions you want to, and if the other side wants to object, why, the Court [114] will rule.

Mr. Donaugh: The Government rests. your Honor.

(Government rests.)

Mr. Bernard: At this time, your Honor, the defendant wishes to interpose a motion for a mandatory verdict or judgment of not guilty in this case, on the ground, first, that the indictment fails to state a charge, inasmuch as it is alleged in the indictment that the defendant was born at Hood River, Oregon, in 1916, and there is a presumption from the fact of birth that citizenship follows.

Second, that the evidence is conclusive and without dispute that defendant since his birth, and particularly at the time alleged in the indictment that these acts were committed, has been and is a citizen of the United States, and as such these regulations are void as to him, for the reason that they deprive

Exhibit X—(Continued)

him of his liberty and his property without due process of law.

Mr. Burdell: If the Court please, I know that your Honor is familiar with the rule that due process of law does not preclude a reasonable classification. I won't burden you with any discussion at length. The Supreme Court in a recent case——

The Court: (Interrupting) I don't want to hear any argument at this moment. I will consider it—Are you going to argue the case?

Mr. Burdell: I could, your Honor. I was about to.

The Court: Well, it is ten minutes to five, and I don't think [115] I will launch into the argument this afternoon. I have these gentlemen whom I have requested to be present, and——

Mr. Burdell: (Interrupting) I would like to take more than ten minutes.

The Court: I assumed so. I would suggest that inasmuch as the question is pretty involved you had better include the other grounds of your motion, and that is that it deprives him of equal protection of the law. That is the other phase of it.

Mr. Bernard: Well, I will. I am glad your Honor called that to my attention. I will add to the motion that, in addition to the ground that the regulations violate the due process of law provisions of the Fifth Amendment, the regulation is discriminatory in that it applies to Japanese-American citizens, or citizens of Japanese ancestry, and to no

Exhibit X—(Continued)

other citizens, and does not apply to citizens of Italian ancestry or citizens of German ancestry, and that the regulation is discriminatory and deprives the defendant of the equal protection of the laws which he is entitled to enjoy as an American citizen.

The Court: I think that I shall stop the proceedings this evening, and I am willing to hear from everyone as to when we shall argue the case, now. I will be here tomorrow; I will be here part of the time Monday, although I don't know how much of my time will be available then; I will be here again on Thursday for holding of naturalization proceedings, but other than that I will not be back until the following Monday. I am [116] going to Pendleton to try cases there, but I will fly down for the naturalization proceedings on Thursday.

Mr. Bernard: I might state, as far as my own condition is concerned, your Honor, I have had a case carried along in the Circuit Court which was supposed to go out a couple of days ago and which I felt might drag over today, and so I had an understanding that it would be assigned out tonight to be heard Monday, and, just considering my own preference, I would prefer to argue the case when you are here Thursday or at some later date. Now, that is my own preference in the matter.

The Court: The Government?

Mr. Burdell: That is satisfactory, your Honor. Is it your Honor's desire, or does your Honor have

Exhibit X—(Continued)

any interest in the matter, that the matter be argued by the Government before the submission of briefs by the *amici curiae*, or would you prefer that it be done after the submission of all briefs?

The Court: Well, I have had no feeling about it. Since I have asked these gentlemen to be present, I will consult their own convenience about when they want to bring in their briefs or if they want to make any argument orally or otherwise.

Mr. Burdell: Well, next Thursday is satisfactory, your Honor, to the Government.

Mr. Spencer: If your Honor please, I think I can speak on behalf of counsel who have been appointed in saying for all of them, I think, that our judgment, perhaps, is that we could [117] best serve by filing briefs at a proper time. In the preliminary discussion that we had the other day there was no suggestion that we participate in the argument. In fact, we did not understand that that was expected of us.

The Court: It is not expected of you. I just——

Mr. Spencer: Well, I rather think that whatever service we render could be best rendered in the form of briefs, and at the time I don't know that I am prepared to voice my feelings.

Mr. Solomon: May it please the Court, at the preliminary meeting that we had it was indicated that your Honor desired that we submit those briefs prior to July 13th. At the time of that meeting we were under the impression that we would submit the briefs at this time, but we were notified

Exhibit X—(Continued)

at that time that no briefs would be asked before July 13th, the date upon which your Honor was going to return to Portland. Mr. Green, who was here this morning, his final words were, "Get as much time as you can."

The Court: That is a remarkable suggestion. Just in order to clarify the situation, I think that that must be a misunderstanding. I made no such suggestion as to July 13th.

Mr. Kester: May it please the Court, I think I can explain. The statement was made that your Honor set a number of things over that same morning for the 13th with the understanding that you would be out of the city and not be back and in a position to handle matters until then, and it was thought that probably [118] that date would be in accordance with your Honor's wishes.

Mr. Morris: If the Court please, as I understand, the present question is whether the arguments should be before or after we make our briefs, and I know that any effort that I make by Thursday would not be of value. I don't think I can be ready by Thursday.

The Court: Well, I think that what we will do is go ahead with argument on Thursday, both by the Government and by the defense, and then I will not set any time for briefs by those who are here. They may file briefs at such time as they choose, and the Court will have to give some time on those in any event. I will not give any direction to you, but any-

Exhibit X—(Continued)

thing that you feel that you can give the Court any light and service on I will appreciate your bringing in a brief. I think there are questions that have developed that I had not at all anticipated in the course of the trial of the case. There is one question that has been in my mind, and that is the question of whether the intention of a person possessed of dual citizenship, although not expressed in acts, is sufficient to permit a claim of allegiance of one type of citizenship or the other, whether the existence of an intention that the Court might find would be conclusive, or overt acts which tended to show that he claimed the other citizenship, if the Court thought the overt acts were not in good faith, and, of course the question of fact as to what the intention of the defendant actually was upon the attainment of majority. I think [119] I may say on that question that the Court as trier of the facts is not precluded from a finding of intention to accept Japanese citizenship simply because the defendant has testified that he had no such intent. I just suggest those considerations to you, gentlemen.

If there is nothing further, Court is now in adjournment until tomorrow morning at ten o'clock.

(Whereupon, at 4:58 o'clock p. m., Friday, June 12th, 1942, the oral testimony and proceedings at the trial of the above entitled cause were concluded, the Court taking an adjournment until 10:00 o'clock a. m., Saturday, June 13, 1942.) [120]

[Title of District Court and Cause.]

CERTIFICATE OF REPORTER TO
TRANSCRIPT OF TESTIMONY

I, Cloyd D. Rauch, hereby certify that on Friday, June 12, 1942, I reported in shorthand the oral proceedings and testimony had at the trial of the above entitled cause, that I subsequently caused my said shorthand notes to be reduced to typwriting, and that the foregoing transcript, pages numbered 1 to 120, both inclusive, constitutes a full, true and accurate transcript of said proceedings, so taken by me in shorthand on said date as aforesaid, and of the whole thereof.

Dated at Portland, Oregon, this 16th day of June, A. D. 1942.

CLOYD D. RAUCH,
Reporter.

[Endorsed]: Lodged in Clerk's office Dec. 15, 1942. G. H. Marsh, Clerk. By R. DeMott, Dep.

[Endorsed]: U. S. District Court, District of Oregon. Filed Jan. 5, 1943. G. M. Marsh, Clerk.
[121]

[Title of District Court and Cause.]

NOTICE OF APPEAL

The name and address of appellant is, Minoru Yasui, Hood River, Oregon.

The name and address of appellant's attorneys is, E. F. Bernard, and Collier, Collier & Bernard, 1220 Spalding Building, Portland, Oregon.

The offense of which defendant was convicted is a Violation of Public Proclamation No. 3 of the Western Defense Command, and Public Law No. 503, 77th Congress, approved March 21, 1942.

The date of the judgment of conviction is November 18, 1942.

A brief description of the judgment or sentence imposed on defendant and from which he appeals, is to the effect that defendant be imprisoned for one year in such place as the Attorney General may designate, and pay a fine of Five Thousand (\$5000.00) Dollars, and stand committed until such fine is paid.

The name of the prison where defendant is now confined is Multnomah County Jail, Portland, Multnomah County, Oregon, the place of imprisonment under said sentence having not been designated by the Attorney General.

I, the above named appellant, hereby appeal to the United States Circuit Court of Appeals for the 9th Circuit, from the judgment above mentioned on the grounds set forth below.

MINORU YASUI,
Appellant

Dated this 20th day of November, 1942.

The grounds of this Appeal are:

First: The Court erred in not sustaining defendant's demurrer to the indictment herein.

Second: The Court erred in over-ruling defendant's motion for a directed verdict of acquittal made immediately after all the evidence herein was introduced.

Third: The Court erred in finding and holding that the defendant was a citizen of Japan and in not holding that he was a citizen of the United States.

Fourth: The Court erred in imposing against defendant the sentence herein described or any sentence.

Due and legal service of the foregoing Notice of Appeal is hereby accepted and admitted in Portland, Multnomah County, Oregon, this 20th day of November, 1942.

CARL C. DONAUGH

United States Attorney

[Endorsed]: Filed Nov. 20, 1942.

District Court of the United States for the
District of Oregon

C-16056

UNITED STATES OF AMERICA

vs.

MINORU YASUI

1. Indictment for violation of Public Proclamation No. 3 of the Western Defense Command Act approved March 21, 1942, filed April 22, 1942.

2. Arraignment, May 4, 1942.

3. Plea to Indictment, Not Guilty, May 4, 1942.

5. Trial by Court, June 12th and June 18th, 1942.

6. Finding of guilty, November 16, 1942.

7. Judgment, one year imprisonment and \$5,-000.00 fine, November 18, 1942.

8. Notice of Appeal filed November 20, 1942.

November 20, 1942.

Attest:

G. H. MARSH

Clerk

[Title of District Court and Cause.]

ASSIGNMENTS OF ERROR

The defendant, in connection with his appeal, makes the following assignments of error which he avers occurred upon the trial of the cause:

1. The court erred in overruling the defendant's motion for a directed verdict of not guilty and for a verdict and judgment of not guilty for the reason and upon the ground that the defendant is and at all times has been a citizen of the United States of America and because the regulations which he is charged with having violated are void as to citizens of the United States of America and void as to citizens of the United States of America of Japanese ancestry and particularly the defendant in that they deprive such citizens and the defendant of life, liberty and property without due process of law and in that the regulations are discriminatory in contravention of the Fifth Amendment to the Constitution of the United States of America and for the further reason and upon the further ground that the indictment does not charge that the defendant is an alien but alleges facts from which it appears that he is and at all times has been a citizen of the United States of America.

2. The court erred in finding that the defendant is not a citizen of the United States of America for the reason and upon the ground that the evidence in the case is beyond dispute that the defendant is and at all times has been a citizen of the United States of America and for the further reason and upon the further ground that the indictment does not charge that the defendant is an alien but alleges facts from which it appears that he is a citizen of the United States.

3. The court erred in finding that the defendant was a citizen of Japan for the reason and upon the ground that there is no evidence in the case upon which such a finding can be based and for the further reason that the indictment does not charge that the defendant is a citizen of Japan or an alien but alleges facts from which it appears that the defendant is and at all times has been a citizen of the United States of America.

4. The court erred in not finding that the defendant is and at the time of the commission of the acts charged in the indictment was and at all other times was a citizen of the United States of America, for the reason and upon the ground that the evidence is beyond dispute that the defendant has at all times been a citizen of the United States of America and for the further reason and upon the further ground that there is no evidence that the defendant has ever been a citizen of any country other than the United States of America and for the further reason and upon the further ground that the indictment alleges that the defendant is a citizen of the United States of America.

5. The court erred in overruling the defendant's objection to the imposing of any sentence against him for the reason and upon the ground that the indictment in the case does not charge that the defendant is or was an alien but alleges facts suf-

ficient to show that the defendant at all times has been a citizen of the United States of America.

COLLIER, COLLIER &

BERNARD

Attorneys for Defendant

State of Oregon

County of Multnomah—ss.

Due service of the within Assignments of Error is hereby accepted in Multnomah County, Oregon, this 15th day of December, 1942, by receiving a copy thereof duly certified as such by E. F. Bernard, of Attorneys for the Defendant.

CARL C. DONAUGH

Of Attorneys for Defendant

[Endorsed]: Filed Dec. 15, 1942.

[Endorsed]: No. 10317. United States Circuit Court of Appeals for the Ninth Circuit. Minoru Yasui, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the District of Oregon.

Filed January 11, 1943.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 10317

MINORU YASUI,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

STATEMENT OF POINTS ON APPEAL

The appellant files this statement of the points on which he intends to rely on the appeal:

1. The indictment does not state an offense in that the laws and regulations which the defendant is charged with violating are void because they deprive him of his liberty and property without due process of law.

2. The indictment does not charge a crime in that it fails to allege that the defendant is an alien but, on the contrary, alleges facts showing that the defendant is, and at all times has been, a citizen of the United States of America.

3. The indictment does not allege a crime inasmuch as the laws and regulations which the defendant is charged with violating deprive American citizens of Japanese ancestry and particularly the defendant of liberty and property without due process of law, and in that they deny American

citizens of Japanese ancestry and particularly the defendant the equal protection of the laws.

4. The court erred in overruling the defendant's motion for a directed verdict of not guilty and for a verdict and judgment of not guilty for the reason and upon the ground that the defendant is and at all times has been a citizen of the United States of America and because the regulations which he is charged with having violated are void as to citizens of the United States of America and void as to citizens of the United States of America of Japanese ancestry and particularly the defendant in that they deprive such citizens and the defendant of life, liberty and property without due process of law and in that the regulations are discriminatory in contravention of the Fifth Amendment to the Constitution of the United States of America and for the further reason and upon the further ground that the indictment does not charge that the defendant is an alien but alleges facts from which it appears that he is and at all times has been a citizen of the United States of America.

5. The court erred in finding that the defendant is not a citizen of the United States of America for the reason and upon the ground that the evidence in the case is beyond dispute that the defendant is and at all times has been a citizen of the United States of America and for the further reason and upon the further ground that the indictment does not charge that the defendant is an alien but alleges facts from which it appears that he is a citizen of the United States.

6. The court erred in finding that the defendant was a citizen of Japan for the reason and upon the ground that there is no evidence in the case upon which such a finding can be based and for the further reason that the indictment does not charge that the defendant is a citizen of Japan or an alien, but alleges facts from which it appears that the defendant is and at all times has been a citizen of the United States of America.

7. The court erred in not finding that the defendant is and at the time of the commission of the acts charged in the indictment was and at all other times was a citizen of the United States of America, for the reason and upon the ground that the evidence is beyond dispute that the defendant has at all times been a citizen of the United States of America and for the further reason and upon the further ground that there is no evidence that the defendant has ever been a citizen of any country other than the United States of America and for the further reason and upon the further ground that the indictment alleges that the defendant is a citizen of the United States of America.

8. The court erred in overruling the defendant's objection to the imposing of any sentence against him for the reason and upon the ground that the indictment in the case does not charge that the defendant is or was an alien but alleges facts sufficient to show that the defendant at all times has been a citizen of the United States of America, and for the further reason that the laws and regula-

tions which the defendant is charged with violating are void because they deprive him of liberty and property without due process of law.

The appellant designates that the entire record be printed including the Bill of Exceptions, and the transcript of the evidence made a part thereof.

E. F. BERNARD

Of Counsel for Appellant.

Service of the foregoing Statement and designation on this 18th day of January, 1943, is hereby admitted.

J. MASON DILLARD

United States Attorney

[Endorsed]: Filed Jan. 20, 1942.